

FLYNN AFFIDAVIT EXHBIT 1

**Edra Blixseth Post Settlement Asset List and Liability**

Prepared By Jory Russell

As of 8.15.08

Private and Confidential

**Asset List - Post Settlement**

Assets	PDNB Account	Security	Entity and Ownership
Cash (Checking Account)	492,314		
Accounts Receivable			
Story Mill	19,500,000		Edra Blixseth owns 100% of Receivable
X Patterns	8,000,000		Edra Blixseth owns 100% of Receivable
<b>Business</b>			
<b>Business Name</b>	<b>Property Type</b>	<b>Est. Current MV</b>	
Monarch Investments	LLC	2,800,000	Stockman 2 million
Monarch Furniture and Design	LLC	2,879,017	American Bank 1 Million
Monarch Go Build Construction	LLC	637,000	Unencumbered
Blkware	LLC	13,262,989	Wachovia 8 million
Blixseth Family Investments	LLC	29,705,699	First Bank 8 Million
		<b>49,284,705</b>	
<b>Real Estate</b>			
<b>Property Name</b>	<b>Property Type</b>	<b>Current Mkt Value</b>	
Yellowstone Club et al	Private	500,000,000	CS 300 Million
Porcupine Creek (Land and Improvements)	Private	207,590,000	1st - Cross Harbor (35MM)
YDI - Chateau De Farcheville	Private	63,900,000	Unencumbered
Casa Captiva - Cabo Home	Private	22,500,000	Unencumbered
Yellowstone Club - Family Compound	Private	40,000,000	1st - CH (13MM) / 2nd - Lemond (13.5MM) / 3rd - CH (22MM)
Yellowstone Club Home Lot 48	Private	7,000,000	Yellowstone Development
Rancho Mirage Homes (Outside PC Gates)	Private	4,000,000	800K Encumbrance PDNB
Bellevue Condo - WA Home	Private	3,000,000	WCP / M&I Bank
Bozeman Condo	Private	300,000	Unencumbered
Rancho Mirage Condos (2 @300K)	Private	600,000	Unencumbered
<b>Total</b>		<b>848,890,000</b>	

BGI owns 91%

BGI owns 100%

BGI owns 91%

BGI owns 100%

Edra Blixseth owns 100%

YD owns 85% BFI owns 6% total 91% owned

BGI owns 100%

Edra Blixseth owns 100%

Edra Blixseth owns 100%

Edra Blixseth owns 100%

## Edra Blixseth Projected Profit and Loss Statement 1 Year

Private and Confidential

## Assumptions

1 CF is sold by Sept 15th, 2008

	2008												2009				Total
	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug					
<b>Revenue</b>																	
PC corporate Events				500,000	500,000	1,000,000	1,500,000	1,500,000	1,500,000	1,500,000	1,000,000	500,000					9,500,000
YC	337,000	21,600,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000	100,000				22,937,000
Big Springs Realty	250,000	500,000	500,000	1,000,000	1,000,000	2,250,000	1,250,000	1,250,000	500,000	500,000	500,000	500,000	500,000				10,000,000
Bixware				50,000	1,493,765	1,496,565	1,498,917	1,501,883	1,508,212	3,508,929	1,511,280	1,518,531					14,088,083
BFI					2,925,000												2,925,000
<b>Total Revenue</b>	<b>587,000</b>	<b>22,100,000</b>	<b>1,100,000</b>	<b>1,650,000</b>	<b>6,518,765</b>	<b>5,346,565</b>	<b>4,348,917</b>	<b>4,351,883</b>	<b>3,608,212</b>	<b>5,108,929</b>	<b>2,611,280</b>	<b>2,118,531</b>					<b>69,450,083</b>
<b>Expenses</b>																	
PC corporate Events				50,000	50,000	100,000	150,000	150,000	150,000	100,000	50,000						950,000
Bixware	377,540	377,540	377,540	377,540	377,540	377,540	377,540	377,540	377,540	377,540	377,540	377,540					4,530,480
Porcupine Creek	414,292	414,292	414,292	414,292	414,292	414,292	414,292	414,292	414,292	414,292	414,292	414,292					4,971,504
Casa Captiva	15,933	15,933	15,933	15,933	15,933	15,933	15,933	15,933	15,933	15,933	15,933	15,933					191,196
RM homes	3,701	3,701	3,701	3,701	3,701	3,701	3,701	3,701	3,701	3,701	3,701	3,701					44,410
Bellevue Condo	9,987	9,987	9,987	9,987	9,987	9,987	9,987	9,987	9,987	9,987	9,987	9,987					119,848
EB Phoenix	360,000	360,000	360,000	360,000	360,000	360,000	360,000	360,000	360,000	360,000	360,000	360,000					4,320,000
Personal	234,733	234,733	234,733	234,733	234,733	234,733	234,733	234,733	234,733	234,733	234,733	234,733					2,816,796
Interest	160,000	72,035	72,035	72,035	72,035	72,035	72,035	72,035	72,035	72,035	72,035	72,035					952,385
Other	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000					120,000
<b>Total Expenses</b>	<b>1,586,186</b>	<b>1,498,221</b>	<b>1,548,221</b>	<b>1,548,221</b>	<b>1,598,221</b>	<b>1,648,221</b>	<b>1,648,221</b>	<b>1,648,221</b>	<b>1,648,221</b>	<b>1,598,221</b>	<b>1,548,221</b>	<b>1,498,221</b>					<b>19,016,619</b>
<b>Net Cash Flow</b>	<b>(999,186)</b>	<b>20,601,779</b>	<b>(448,221)</b>	<b>101,779</b>	<b>4,920,544</b>	<b>3,698,344</b>	<b>2,700,696</b>	<b>2,703,662</b>	<b>1,959,991</b>	<b>3,510,708</b>	<b>1,063,059</b>	<b>620,310</b>					<b>40,433,464</b>

Personal Assets	Description	Current Market Value	Edra Blixseth owns 100%
G2B	Jet	4,500,000	Edra Blixseth owns 100%
Personal property (Vehicles & Jewelry)	Personal Property	3,900,000	Edra Blixseth owns 100%
Inventory	Household Inventory	12,500,000	Edra Blixseth owns 100%
<b>Total Personal</b>		<b>20,900,000</b>	
<b>Total Assets</b>		<b>947,067,019</b>	

### Liability List - Post Settlement

Liabilities	Type of Facility	Outstanding Amount
<b>Lender</b>		
CIP Yellowstone Lending LLC	Bank	35,100,000
American Bank 294	Bank	2,000,000
American Bank 919	Bank	5,000,000
First Bank	Bank	7,857,120
PDNB 711517864	Bank	2,500,000
PDNB 773817855	Bank	850,000
Stockman's Bank 791	Bank	2,000,000
Stockman's Bank 856	Bank	202,000
Wachovia	Bank	8,000,000
		<b>63,509,120</b>
<b>Other Liabilities</b>		
Taxes	MT and CA	1,151,533
TB	Dissolution of Marriage	5,750,000
LeMond Settlement		13,500,000
M&I Bank / WCP	Bellevue Condo	3,000,000
Legal	Outstanding Payables	5,461,946
Personal and Business	Outstanding Payables	5,209,009
<b>Total Debt</b>		<b>97,581,608</b>
<b>Net Worth</b>		<b>849,485,412</b>
<b>Total Liabilities &amp; Net Worth</b>		<b>947,067,019</b>

As of Aug 15, 2008  
Loan Detail

Lender	Type of Facility	Total Credit Available	Outstanding Amount	Balance	Int Rate	Payment	Loan #	Maturity
CIP Yellowstone	Bank	-	35,100,000	35,100,000	8.00%			10/1/2008
American Bank 294	Bank	-	2,000,000	2,000,000	8.50%	14,166.67	6406294	See Edra
American Bank 919	Bank	-	5,000,000	4,986,075	Prime + 1	25,944.25	6405919	See Edra
First Bank	Bank	142,880	7,857,120	7,857,120	9.00%	Int Reserve	406081227708	10/1/2008
PDNB 711517864	Bank	-	2,500,000	2,500,000	5.25%	11,822.92	711517864	11/15/2008
PDNB 773817855	Bank	-	850,000	850,000	5.00%	3,659.72	773817855	11/15/2008
Stockmans Bank 791	Bank	-	2,000,000	2,003,517	5.00%	33,167.32	1640016791	11/15/2008
Stockmans Bank 856	Bank	-	202,000	202,000	8.75%	2,282.86	1640016856	11/15/2008
Wachovia	Bank	-	5,000,000	5,000,000	6.00%	25,740.80	000-00-0002-6	Demand
Wachovia	Bank	-	3,000,000	2,917,500	6.00%	16,483.87	000-00-0004-2	Demand
			<b>63,509,120</b>					

FLYNN AFFIDAVIT EXHBIT 2

**Edra Blixseth Post Settlement Asset List and Liability****As of 7.15.08****Private and Confidential****Asset List - Post Settlement****Assets**

Cash (Checking Account)	PDNB Account	100,266
Accounts Receivable	Story Mill	19,500,000 1

**Business**

Business Name	Property Type	Est. Current MV	Security
Monarch Investments	LLC	2,800,000	Unencumbered
Monarch Furniture and Design	LLC	2,879,017	Unencumbered
Monarch Go Build Construction	LLC	637,000	Unencumbered
Bloxware	LLC	23,027,486	Wachovia 8 million
Blixseth Family Investments	LLC	29,705,699	2 First Bank 8 Million
		<b>59,049,202</b>	

**Real Estate**

Property Name	Property Type	Current Mkt Value	
Yellowstone Club et al	Private	900,000,000 3	CS 300 Million
Bucks T-4 Lodge		8,000,000	
Porcupine Creek (Land and Improvements)	Private	207,590,000	Unencumbered
YDI - Chateau De Farcheville	Private	68,000,000	Unencumbered
Casa Captiva - Cabo Home	Private	22,500,000	Unencumbered
Yellowstone Club - Family Compound	Private	65,000,000 4	Lemond
Yellowstone Club Home Lot 148	Private	7,000,000	Unencumbered
Rancho Mirage Homes (Outside PC Gates)	Private	4,000,000	800K Encumbrance PDNB
Bellevue Condo - WA Home	Private	3,000,000 5	WCP / M&I Bank
Bozeman Condo	Private	300,000	Unencumbered
Palm Valley Condo	Private	300,000	Unencumbered
<b>Total</b>		<b>1,285,690,000</b>	

Personal Assets	Description	Current Market Value	
G2B	Jet	4,500,000	6 National City collateral GIV
Personal property (Vehicles & Jewelry)	Personal Property	3,900,000	Unencumbered
Inventory	Household Inventory	12,500,000	Unencumbered
<b>Total Personal</b>		<b>20,900,000</b>	

**Total Assets****1,385,239,468****Liability List - Post Settlement****Liabilities**

Lender	Type of Facility	Outstanding Amount
American Bank 294	Bank	2,000,000
American Bank 919	Bank	5,000,000
First Bank	Bank	7,857,120
PDNB	Bank	2,500,000
Stockman's Bank 791	Bank	2,000,000
Stockman's Bank 791	Bank	202,000
Wachovia	Bank	8,000,000
		<b>27,559,120</b>

<b>Other Debt</b>			7
Tim Blixseth	See 1st Draw Tab	8,000,000	
Tim Blixseth/ Cross Harbor	See 1st Draw Tab	12,000,000	
TB - YC Family Compound 1.5 within 91	See 1st Draw Tab	3,750,000	
Lemond Settlement	See 1st Draw Tab	6,000,000 8	
Income Taxes	See 1st Draw Tab	3,277,112	
Property Taxes	See 1st Draw Tab	594,865	
M&I Bank / WCP	See 2nd Draw Tab	4,500,000	
Legal	See 2nd Draw Tab	4,037,976	
Personal	See 2nd Draw Tab	3,340,973	

**Total Debt 73,060,047****Net Worth 1,312,179,422****Total Liabilities & Net Worth 1,385,239,468****Footnote**

- 1 Receivable paid within 90 days due to project refinance based off London Group Appraisal.  
 2 60% Ownership of 5 A Shares to \$20MM, 1B Share to \$5MM & 24,509,499 Note Receivable

# Edra Blixseth Post Settlement Asset List and Liability

As of 7.15.08  
Private and Confidential

## Asset List - Post Settlement

Assets	PDNB Account	Security
Cash (Checking Account)	100,266	
Accounts Receivable		
Story Mill	19,500,000	1
X Patterns	8,000,000	2
<b>Business</b>		
<b>Business Name</b>	<b>Property Type</b>	<b>Est. Current MV</b>
Monarch Investments	LLC	2,800,000
Monarch Furniture and Design	LLC	2,879,017
Monarch Go Build Construction	LLC	637,000
Blkware	LLC	13,262,989
Blixseth Family Investments	LLC	29,705,699
		49,284,705
<b>Real Estate</b>		
<b>Property Name</b>	<b>Property Type</b>	<b>Current Mkt Value</b>
Yellowstone Club et al	Private	819,000,000
Porcupine Creek (Land and Improvements)	Private	207,590,000
YDI - Chateau De Farcheville	Private	61,880,000
Casa Captiva - Cabo Home	Private	22,500,000
Yellowstone Club - Family Compound	Private	65,000,000
Yellowstone Club Home Lot 48	Private	7,000,000
Rancho Mirage Homes (Outside PC Gates)	Private	4,000,000
Bellevue Condo - WA Home	Private	3,000,000
Bozeman Condo	Private	300,000
Rancho Mirage Condos (2 @300K)	Private	600,000
<b>Total</b>		<b>1,190,870,000</b>

Stockmans 2million  
Unencumbered  
Unencumbered  
Wachovia 8 million  
3 First Bank 8 Million

CS 300 Million  
Unencumbered  
Unencumbered  
Unencumbered

Lemond / Cross Harbor/ TB  
Unencumbered

800K Encumbrance PDNB  
WCP / M&I Bank  
Unencumbered  
Unencumbered



Personal Assets	Description	Current Market Value
G2B	Jet	4,500,000
Personal property (Vehicles & Jewelry)	Personal Property	3,900,000
Inventory	Household Inventory	12,500,000
<b>Total Personal</b>		<b>20,900,000</b>
<b>Total Assets</b>		<b>1,288,654,971</b>

7 National City collateral for GIV  
Unencumbered  
Unencumbered

### Liability List - Post Settlement

Liabilities	Type of Facility	Outstanding Amount	
<b>Lender</b>	<b>Bank</b>	<b>2,000,000</b>	<b>Edra Blixeth Gaurantee</b>
American Bank 294	Bank	5,000,000	Edra Blixeth Gaurantee.
American Bank 919	Bank	7,857,120	Secured by BFI
First Bank	Bank	2,500,000	No Collateral
PDNB	Bank	2,000,000	Secured by Monarch Investments Building
Stockman's Bank 791	Bank	202,000	Edra Blixeth Gaurantee.
Stockman's Bank 791	Bank	8,000,000	Secured by Blixware
Wachovia	Bank	<b>27,559,120</b>	
<b>Other Liabilities</b>		<b>8</b>	
Tim Blixeth	See 1st Draw Tab	8,000,000	
Cross Harbor	See 1st Draw Tab	12,000,000	
Cross Harbor		2,000,000	YC Family Compound
TB - YC Family Compound 1.5 within 91	See 1st Draw Tab	3,750,000	YC Family Compound
LeMond Settlement Payment 1	See 1st Draw Tab	6,000,000	
LeMond Settlement Payment 2	See Farcheville Sale Tab	13,000,000	YC Family Compound
Income Taxes	See 2nd Draw Tab	3,277,112	
Property Taxes	See 2nd Draw Tab	594,865	CA Properties including PC
M&I Bank / WCP	See 1st Draw Tab	4,500,000	Bellevue Condo for Story Mill
Legal	See 2nd Draw Tab	4,287,976	
Personal	See 2nd Draw Tab	3,340,973	
<b>Total Debt</b>		<b>88,310,047</b>	
<b>Net Worth</b>		<b>1,200,344,925</b>	
<b>Total Liabilities &amp; Net Worth</b>		<b>1,288,654,971</b>	

#### Footnote

1 Receivable paid within 90 days due to project refinance based off London Group Appraisal.

- 2 10million total receivable, 2Million has been satisfied remaining 8million paid over 3 years period
- 3 60% Ownership of 5 A Shares tti \$20MM, 1B Share tti \$5MM & 24.509,499 Note Receivable
- 4 \$1.3Billion Appraisal conducted in 2007 less net amount of outstanding balance with CS Loan 300MM and misc lot sales
- 5 160 Total Acres. Plotting for 41 density units over 141 Acres for 58-65MM
- 6 Payment of 4.5MM on Go Build Note will release any security held by WCP/ M& I Bank
- 7 Collateral for Purchase of GIV from National City
- 8 Dissolution of Marriage Settlement
- 9 Remaining LT payment to Lemond \$13MM allocated to the proceeds from the sale of the CF

### Liability List - Pre Settlement

#### Liabilities

Lender	Type of Facility	Outstanding Amount
American Bank 294	Bank	2,000,000
American Bank 919	Bank	5,000,000
First Bank	Bank	7,857,120
PDNB	Bank	2,500,000
Stockman's Bank 791	Bank	2,000,000
Stockman's Bank 791	Bank	202,000
Wachovia	Bank	8,000,000
		<u>27,559,120</u>

#### Other Debt

Income Taxes	See 1st Draw Tab	3,277,112
Property Taxes	See 1st Draw Tab	594,865
M&I Bank / WCP	See 2nd Draw Tab	4,500,000
Legal	See 2nd Draw Tab	4,037,976
Personal	See 2nd Draw Tab	3,340,973
Total Other Debt		<u>15,750,927</u>

#### Total Debt

	<u><u>43,310,047</u></u>
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FLYNN AFFIDAVIT EXHBIT 3

**For Discussion  
Purposes Only**

**Yellowstone Club**

**Discussions between Edra/YC Entities  
and CrossHarbor Capital Partners**

**August 1, 2008**

**CROSSHARBOR**  
**CAPITAL PARTNERS**

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## **Preliminary Agreement**

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- CrossHarbor Capital Partners (“CH”) seeks to provide short-term bridge financing to Edra Blixseth (“EB”) in order to close on her divorce from Tim Blixseth and implement a financial plan to stabilize the Yellowstone Club and all affiliated entities (the “YC”).
- In order to move forward, CH needs assurance of its complete understanding of the situation; therefore, CH requires it be provided with the following documents:
  - All divorce settlement related documents (RECEIVED).
  - Detailed, updated financial statements for EB.
  - All underwriting materials provided to PEM, Archer, and other potential sources of capital.
  - Detailed, updated financial statements for the YC since 3/31/2008 that may be available to confirm the financial status quo of the YC and all affiliated entities.
- Additionally, CH needs a full recognition of its existing rights through the execution of the previously agreed-upon Letter Agreement.

## CH Bridge Loan to Edra

- CrossHarbor ("CH") provides Edra Blixseth with \$35 MM loan:
- Closing ASAP (week of 8/4/2008).
  - 8% Simple Interest and no fees.
  - 60-day term (repayment from sale of Farcheville).
  - EB covers CH closing costs.
  - Collateral:
    - First Mortgage on Porcupine Creek.
    - Assignment of proceeds on Farcheville sale.
    - First Mortgage on Family Compound/160-acre parcel ("FC").

Estimated Sources & Uses @ Divorce Settlement (8/4/2008)			
Source of Funds	Amount	% of Total	Use of Funds
CrossHarbor Loan	\$ 35,000,000	100.00%	Repay existing CH FC Loan
Other	-	0.00%	LeMond Payment
			Cash to Tim
			EB - Financing Deposits
			Property Tax Lien - PCP
			CH Closing Costs
			YC Working Capital & A/P
<b>Total Sources</b>	<b>\$ 35,000,000</b>	<b>100.00%</b>	<b>Total Uses</b>
			\$ 35,000,000
			100.00%

- CH will control distributions of YC working capital.

# Loan from Archer Capital Management

- Secure additional financing from Archer Capital Management (\$55.1 MM, net):
- Repay CH Debt.
  - Final Payment to LeMond litigants.
  - Repay other Edra Debts
    - Personal - \$1.46 MM
    - Taxes - \$2.2 MM
    - M&I Bank/ WCP - \$3.0 MM
  - Collateral:
    - All EB assets excluding Montana/YC-affiliated assets.

Source of Funds	Estimated Sources & Uses @ Archer Closing (8/31/2008)			
	Amount	% of Total	Use of Funds	Amount
Archer Closing (net of fees)	\$ 55,100,000	100.00%	Repayment of CrossHarbor Loan	\$ 35,233,333
Other	-	0.00%	Final Payment to LeMond	13,000,000
			Other Edra Personal Debts	6,674,604
			Legal/Closing Costs	192,063
<b>Total Sources</b>	<b>\$ 55,100,000</b>	<b>100.00%</b>	<b>Total Uses</b>	<b>\$ 55,100,000</b>
				<b>100.00%</b>



# Chateau de Farcheville Closing

- Chateau de Farcheville scheduled to close by 9/15/2008.
  - Eliminate All YC-Related Liabilities through Sale of Farcheville.
  - Paydown Archer.
  - Fund EB Expenses.

Source of Funds	Estimated Sources & Uses @ Farcheville Closing (9/15/2008)			
	Amount	% of Total	Use of Funds	% of Total
Farcheville Closing	\$ 68,500,000	100.00%	YC Operating Escrow /	
Other	-	0.00%	B-Shareholder Payment	\$ 39,500,000 57.66%
			Required Archer Paydown	18,000,000 26.28%
			Edra Misc. Repayments	9,000,000 13.14%
			Closing Costs/Interest/Legal Fees	2,000,000 2.92%
Total Sources	\$ 68,500,000	100.00%	Total Uses	\$ 68,500,000 100.00%

- CH estimates that an additional \$45+ MM will need to be raised to repay Archer:
  - Liquidation of other assets (Casa Captiva, other?).
  - Long-term financing on Porcupine Creek.
- Additional EB investment directly into YC totals \$14.6 MM. CH estimates this will cover current accounts payable and operations through 10/31/2008.

## YC Preferred Equity Offering and YC Governance

- CH desires to create a structure where the interests of EB, CH, and all Yellowstone Club members are aligned. Therefore, CH proposes the following:
- CH provides [\$100] MM of Preferred Equity to invest into the club (all YC-affiliated Entities).
  - [95% / 5%] Joint Venture between new investors / club members and CH.
    - CH serves as agent / fiduciary party / managing member.
  - [10%] Preferred Return and [20%] Equity Participation in YC (get to 30% IRR and 2.5x multiple).
  - Initial closing (\$50 MM) targeted for 10/31/2008 (CH will consider raising the capital in several rounds).
    - Specific use of proceeds to be discussed; peak capital need for the club is expected to occur in 2010.
- Yellowstone Club Executive Committee to be formed between EB, investor representative (from Preferred Equity investors) and CH. Executive Committee will govern the operations and management of the Yellowstone Club, including:
  - Formation of business plan.
  - Club operating decisions (including potential hiring of 3<sup>rd</sup>-party management company).
  - Club marketing decisions (including potential hiring of outside sales agent).
  - Approval of final Master Plan outlining development plan for remaining density units.
  - Implementation of Capital Plan (including prioritizing common area improvements).
  - All financing decisions of YC entities (including repayment/refinancing of CSFB Debt).
- **YC can leverage off all CH work to date.**
  - Joe Harris will provide initial strategic oversight and control of operating cash flow.
  - CH will lead Master Planning for remaining density units in YC.
- CH agrees to Joint Venture with the YC entities to buildout existing inventory.
- CH receives [5%] interest in YC (pari-passu w/EB) as consideration for effort.

## Real Estate Joint Venture 1

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- CH contributes 31 Golf Course lots.
- YC contributes 41 units from the Settlement and 40 units from American Spirit.
- CH pays down CSFB debt by \$64.8 MM (\$800K per density unit), reducing the outstanding balance to approx. \$240 MM.
- CH will invest \$135 MM as follows:
  - Contribution of Golf Course (\$60 MM)
  - Pay down of CSFB Debt (\$64.8 MM)
  - Venture Working Capital (\$4.2 MM)
  - Funding Diligence Costs to date (\$6 MM)
- CH receives 15% preferred return on its \$135 MM of invested capital.
- Net Cash Flow after preferred return is split 60% to YC and 40% to CH.
- Executive Committee to be formed between YC and CH.
  - CH affiliated entities will act as developer/operator, with responsibility for implementing the business plan of this venture based on predetermined budgets.
  - CH will be Managing Member with the deciding vote by nature of its majority capital investment.
- Pro Forma shows \$200 MM+ of proceeds to EB/YC.
- Pro Forma shows 29% IRR and 2.1x multiple to CH.

## Real Estate Joint Venture 2

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- Thoughts on buildout of remaining YC density units:
  - CH will lead Master Planning for remaining density units through Preferred Equity investment and Executive Committee formation.
  - CH will agree to acquire additional land at final plat (through phased takedowns) based on pro forma showing [35%] profit margin.
  - Additional contributions will be as follows:
    - 100% CH
  - Distributions will be as follows:
    - 100% to CH until [20%] IRR and [2.0x] equity multiple
    - [50%] to CH / [50%] YC Thereafter
- The intention here is to create a structure where EB and YC participate both upfront (from land sales) and in the success of the venture(s), through the promoted interest.

# Miscellaneous Issues

- **Liquor License**
  - CH continues to process the purchases and transfers of the liquor license to the Sunrise Club House facility, but will sell/transfer to the YC (at CH's cost basis) when a global partnership is completed.
- **Sunrise Ridge**
  - YC must fund marketing monies owed to UpperCross (approx. \$200K).
  - YC agrees to purchase 4 Sunrise Ridge duplex units for use in Sales & Marketing.
    - 85% of list price.
    - 36 months off market.
  - CH will assist in arranging debt & equity financing to enable sale/leaseback program, as capital is available.
- **Exclusivity/Confidentiality (until Executive Committee in place)**
  - EB/YC and CH mutually agree only to meet or have discussions with CSFB together.
  - EB/YC and CH mutually agree only to meet or have discussions with Discovery or any other potential Operators/Partners together.
  - EB/YC and CH agree to make only joint public statements, to be organized through Edelman, a nationally recognized public relations firm.
  - EB/YC and CH agree to work together on all employment decisions, including hirings, dismissals, and contract executions. CH shall have final approval for all decisions related to Development, Infrastructure, and Sales. EB/YC shall have final approval for all decisions related to Operations.
    - In the case of related party transactions, mutual approval is required.

## Conclusion

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- CH will work with EB to close the divorce settlement and implement a business plan that will allow the Yellowstone Club to thrive.
- CH believes it has outlined structures that will align the interests of EB, CH, and all current and future Yellowstone Club members.
- CH continues to run a variety of financial scenarios for the buildout of the Yellowstone Club and is working on preparing a detailed model to share with EB that incorporates this proposal.
  - Early stage analysis indicates future net cash flow to EB of \$600+ MM.



## PRIVILEGED & CONFIDENTIAL MEMORANDUM

**TO:** Steven B. Yankelevitz, Esq. and Edra Blixseth  
**FROM:** Todd Evan Stark, Esq.  
**DATE:** July 19, 2008  
**RE:** **Comments on Proposed Initial Settlement – Letter Agreement dated July \_\_, 2008, from CIP Yellowstone Acquisition LLC and Club YC Acquisition LLC (collectively, “CH Parties”), and Yellowstone Mountain Club, LLC, Yellowstone Development, LLC, Big Sky Ridge, LLC, Big Springs Realty, LLC and Edra Blixseth (collectively, “YC Parties”)**

---

Edra has requested that we review and comment on the above-referenced letter agreement (the “**Agreement**”). This memorandum is prepared with out the benefit of any review of the underlying documents referenced in the Agreement or the transactions referenced therein; however, such documents are being collected for my review and an updated memorandum will be provided once those documents are received and reviewed. Subject to the foregoing, I provide the following comments:

1. **YC Parties:** Are these the appropriate parties?
2. **CH Parties:** Are these the appropriate parties?
3. **Introductory Paragraph:** There is a recitation that the Agreement memorializes recent conversations. We should include an “Entire Agreement” provision at the end of the Agreement. See attached.
4. **Intro to Numbered Paragraphs:** The Agreement recites that following agreements are in consideration of “CH Parties forbearing from exercising their rights prior to the date of [the Agreement].”
  - (a) **Rights Covered.** With respect to any forbearance, there should be a greater specification of what rights are being referenced (e.g., any and all of the CH Parties rights under the Schedule A Agreements). We should confirm whether the CH Parties think they have any other rights to pursue remedies against any of the YC Parties which are not covered by this Agreement.
  - (b) **Forbearance.** The forbearance “prior to the date of [the Agreement]” has been at their own election and is not consideration for any agreement by the YC Parties. If this is truly a forbearance agreement, then for \$6MM, we want continued forbearance until the September 30<sup>th</sup> date at a minimum.<sup>1</sup> We should consider whether we build in the right to have this extended.

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<sup>1</sup> The \$6MM also serves as consideration for the release of claims against the YC Parties.

July 18, 2008  
Page 2

5. **Paragraph No. 1 (Expense Reimbursement):** Although I do not have the background to evaluate the business terms, \$6MM is a very large amount to be reimbursing the CH Parties without a formal evaluation of the potential liability for such sums in the absence of this Agreement.

- (a) **Reimbursement Obligation Absolute or Contingent; Timing.** This paragraph makes the obligation to pay the \$6MM absolute. However, I am advised by Deborah Klar that Edra Blixseth's understanding is that the \$6MM is payable only in the event that the CH Parties and the YC Parties are unable to reach a global settlement on or before September 30, 2008. If the obligation is contingent, this paragraph will need revision and in order to have the full period to come to a global settlement, the \$6MM should be payable (subject to comments in Section 5(c) below) within 3 business days after September 30th<sup>2</sup>, not on or before September 30, 2008. See comments below regarding delivery of diligence materials.
- (b) **Clarification of \$6MM Cap.** This paragraph is ambiguous and it is not clear that the agreement to pay costs is in fact capped at \$6MM. I would delete "such costs incurred by" from the 9<sup>th</sup> line of this Paragraph. See markup.
- (c) **Verification Mechanism.** This paragraph does not provide for any mechanism for:
  - (i) the CH Parties to provide reasonably detailed backup and evidence of payment of the costs being reimbursed;
  - (ii) the YC Parties to review and approve the information submitted, and/or dispute portions thereof.
  - (iii) The obligation to pay should be only after receipt, review and approval of information submitted (typically, 10 to 30 days). Presumably, we would agree to deposit.
- (d) **Security for Reimbursement Obligation.** This paragraph makes the obligation to pay the \$6MM secured by a deed of trust on Parcel 48.
  - (i) Capacity to encumber Parcel 48. Does one of the YC Parties own Parcel 48?
  - (ii) Restrictions on encumbrance of Parcel 48. What is the value of Parcel 48? Are there existing encumbrances on Parcel 48? Are there any restrictions on Parcel 48 or the owner of Parcel 48 from encumbering it with the deed of trust referenced in this Paragraph. There may be restrictions against encumbering Parcel 48.
  - (iii) Timing of encumbrance of Parcel 48. If as noted above, the obligation to reimburse is contingent, then the requirement for security should not be triggered until the obligation becomes fixed. Given that the obligation is contingent, why

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<sup>2</sup> Or such later date after receipt, review and approval of backup and evidence of payment of reimburseable costs.



July 18, 2008  
Page 3

would we agree to the encumbrance of Parcel 48 now. Even if we are agreeing to encumber Parcel 48 now, it will take some time to put the deed of trust in place. The form and substance of the deed of trust would need to be acceptable to the YC Parties.

- (iv) Alternative Security. Depending upon the resolution of the foregoing issues and the CH Parties insistence on security for the reimbursement obligation, the YC Parties should consider proposing an escrow arrangement where the funds would be deposited into an independent escrow based upon the delivery of back up documentation and released when the obligation to reimburse became absolute and there were no disputes as to the amount.

6. **Paragraph No. 2 (Releases).**

- (a) **Claims Released by CH Parties**. The definition of Claims released should be much broader. It should include any and all Claims arising on or before September 30, 2008 related to any of the transactions by and between the CH Parties and the YC Parties; it should include known and unknown claims (I would reference Civil Code Section 1542). If there is to be any reservation of Claims, they must be specifically described.
- (b) **Claims Released by YC Parties**. If the CH Parties want a reciprocal release, then there should be some monetary consideration to the YC Parties. This could work as an offset to the cost reimbursement amount.

7. **Paragraph No. 3 (Exclusivity).**

- (a) **Forbearance should be with respect to all rights**. As written, it is limited to defaults (b) arising prior to the date of the Agreement and (b) to the extent known by the CH Parties. These limitations should be removed.
- (b) **Forbearance termination conditions**. Should be limited to defaults under the Agreement and to voluntary bankruptcy or undischarged involuntary bankruptcy (after \_\_ days).
- (c) **Covenant not to engage in discussions re transfer**. This must exclude any discussions by the YC Parties with any of their respective consultants or advisors. In addition, as written it only excludes "three-way" negotiations with Discovery Land Company. Accordingly, any discussions between Discovery Land Company and the YC Parties would violate this provision. I doubt that this is what our client would want. The language regarding the conditional waiver with respect to the Discovery Land Company negotiations should be deleted.
- (d) **Transfers excluded**. As written, the only transfers excluded are lot sales of platted lots as of the date of the Agreement in the ordinary course. What about lots platted after the date of this Agreement. It should also exclude transfers in connection with tax or estate planning, required in connection with existing loans and easements and other dedications.

July 18, 2008  
Page 4

Finally, it should also exclude any transfers in connection with settlement with the CH Parties or their affiliates.

8. **Paragraph No. 4 (Sharing of Information).**

- (a) **Timing.** The sharing of information cannot be tied to the payment of the \$6MM since the \$6MM will not be payable until after September 30th. The information needs to be delivered immediately upon execution of the Agreement.
- (b) **Information Covered.** It should exclude only internal valuation and legally privileged information and it should be expanded to include information in the possession or control of the CH Parties.
- (c) **Termination of Confidentiality Provisions.** Without reviewing these provisions, I cannot recommend whether they should be terminated or not.

9. **Paragraph No. 5 (Recognition of Rights).** Comments on this section will be forwarded once the underlying agreements have been reviewed. Based upon the foregoing comments, there will be modifications to this section. Further, any assumption of liabilities should be carefully considered in light of any other restrictions to which the assuming party may be subject. I do not understand the nature of the claim being reserved under clause (b). We may want to review the arbitration provision and determine whether we need additional protections for the YC Parties in connection with such arbitration.

10. **Final Paragraph.** The provisions regarding joint and several liability are too broad and should be revised to specifically cover only those obligations which we intend to have jointly and severally liability.

Additional Provisions

July 18, 2008

Page 1

**Entire Agreement.** This Agreement is the entire Agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the parties with respect to the matters contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed by or in behalf of the party to be bound thereby. No waiver by any party of any breach hereunder shall be deemed a waiver of any other or subsequent breach. The making, execution and delivery of this Agreement by the parties hereto has been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

**Edra Blixseth Post Settlement Asset List and Liability****As of 7.15.08**

Private and Confidential

**Asset List - Post Settlement****Assets**

Cash (Checking Account)	PDNB Account	100,266	
Accounts Receivable	Story Mill	19,500,000	1

**Business**

Business Name	Property Type	Est. Current MV	Security
Monarch Investments	LLC	2,800,000	Unencumbered
Monarch Furniture and Design	LLC	2,879,017	Unencumbered
Monarch Go Build Construction	LLC	637,000	Unencumbered
Blxware	LLC	23,027,486	Wachovia 8 million
Blixseth Family Investments	LLC	29,705,699	2 First Bank 8 Million
		<b>59,049,202</b>	

**Real Estate**

Property Name	Property Type	Current Mkt Value	
Yellowstone Club et al	Private	900,000,000	3 CS 300 Million
Bucks T-4 Lodge		8,000,000	
Porcupine Creek (Land and Improvements)	Private	207,590,000	Unencumbered
YDI - Chateau De Farcheville	Private	68,000,000	Unencumbered
Casa Captiva - Cabo Home	Private	22,500,000	Unencumbered
Yellowstone Club - Family Compound	Private	65,000,000	4 Lemond
Yellowstone Club Home Lot 148	Private	7,000,000	Unencumbered
Rancho Mirage Homes (Outside PC Gates)	Private	4,000,000	800K Encumbrance PDNB
Bellevue Condo - WA Home	Private	3,000,000	5 WCP / M&I Bank
Bozeman Condo	Private	300,000	Unencumbered
Palm Valley Condo	Private	300,000	Unencumbered
<b>Total</b>		<b>1,285,690,000</b>	

Personal Assets	Description	Current Market Value	
G2B	Jet	4,500,000	6 National City collateral GIV
Personal property (Vehicles & Jewelry)	Personal Property	3,900,000	Unencumbered
Inventory	Household Inventory	12,500,000	Unencumbered
<b>Total Personal</b>		<b>20,900,000</b>	

<b>Total Assets</b>	<b>1,385,239,468</b>
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**Liability List - Post Settlement****Liabilities**

Lender	Type of Facility	Outstanding Amount
American Bank 294	Bank	2,000,000
American Bank 919	Bank	5,000,000
First Bank	Bank	7,857,120
PDNB	Bank	2,500,000
Stockman's Bank 791	Bank	2,000,000
Stockman's Bank 791	Bank	202,000
Wachovia	Bank	8,000,000
		<b>27,559,120</b>

<b>Other Debt</b>			7
Tim Blixseth	See 1st Draw Tab	8,000,000	
Tim Blixseth/ Cross Harbor	See 1st Draw Tab	12,000,000	
TB - YC Family Compound 1.5 within 91	See 1st Draw Tab	3,750,000	
Lemond Settlement	See 1st Draw Tab	6,000,000	8
Income Taxes	See 1st Draw Tab	3,277,112	
Property Taxes	See 1st Draw Tab	594,865	
M&I Bank / WCP	See 2nd Draw Tab	4,500,000	
Legal	See 2nd Draw Tab	4,037,976	
Personal	See 2nd Draw Tab	3,340,973	

<b>Total Debt</b>	<b>73,060,047</b>
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<b>Net Worth</b>	<b>1,312,179,422</b>
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<b>Total Liabilities &amp; Net Worth</b>	<b>1,385,239,468</b>
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**Footnote**

1 Receivable paid within 90 days due to project refinance based off London Group Appraisal.

2 60% Ownership of 5 A Shares tti \$20MM, 1B Share tti \$5MM &amp; 24,509,499 Note Receivable

# Edra Blixseth Post Settlement Asset List and Liability

As of 7.15.08

Private and Confidential

## Asset List - Post Settlement

Assets	PDNB Account	Security
Cash (Checking Account)		100,266
Accounts Receivable		
Story Mill		1
X Patterns		2
		19,500,000
		8,000,000
<b>Business</b>		
<b>Business Name</b>	<b>Property Type</b>	<b>Est. Current MV</b>
Monarch Investments	LLC	2,800,000
Monarch Furniture and Design	LLC	2,879,017
Monarch Go Build Construction	LLC	637,000
Blxware	LLC	13,262,989
Blixseth Family Investments	LLC	29,705,699
		49,284,705
		Stockmans 2million
		Unencumbered
		Unencumbered
		Wachovia 8 million
		3 First Bank 8 Million
<b>Real Estate</b>		
<b>Property Name</b>	<b>Property Type</b>	<b>Current Mkt Value</b>
Yellowstone Club et al	Private	819,000,000
Porcupine Creek (Land and Improvements)	Private	207,590,000
YDI - Chateau De Farcheville	Private	61,880,000
Casa Captiva - Cabo Home	Private	22,500,000
Yellowstone Club - Family Compound	Private	65,000,000
Yellowstone Club Home Lot 48	Private	7,000,000
Rancho Mirage Homes (Outside PC Gates)	Private	4,000,000
Bellevue Condo - WA Home	Private	3,000,000
Bozeman Condo	Private	300,000
Rancho Mirage Condos (2 @300K)	Private	600,000
<b>Total</b>		<b>1,190,870,000</b>
		800K Encumbrance PDNB
		WCP / M&I Bank
		Unencumbered
		Unencumbered
		Lemond / Cross Harbor/ TB
		Unencumbered

Personal Assets	Description	Current Market Value
G2B	Jet	4,500,000
Personal property (Vehicles & Jewelry)	Personal Property	3,900,000
Inventory	Household Inventory	12,500,000
<b>Total Personal</b>		<b>20,900,000</b>
<b>Total Assets</b>		<b>1,288,654,971</b>

7 National City collateral for GIV  
Unencumbered  
Unencumbered

## Liability List - Post Settlement

Liabilities	Type of Facility	Outstanding Amount	
<b>Lender</b>			
American Bank 294	Bank	2,000,000	Edra Blixseth Gaurantee
American Bank 919	Bank	5,000,000	Edra Blixseth Gaurantee.
First Bank	Bank	7,857,120	Secured by BFI
PDNB	Bank	2,500,000	No Collateral
Stockman's Bank 791	Bank	2,000,000	Secured by Monarch Investments Building
Stockman's Bank 791	Bank	202,000	Edra Blixseth Gaurantee.
Wachovia	Bank	8,000,000	Secured by Blixware
		<b>27,559,120</b>	
<b>Other Liabilities</b>			
Tim Blixseth	See 1st Draw Tab	8,000,000	8
Cross Harbor	See 1st Draw Tab	12,000,000	
Cross Harbor		2,000,000	YC Family Compound
TB - YC Family Compound 1.5 within 91	See 1st Draw Tab	3,750,000	YC Family Compound
LeMond Settlement Payment 1	See 1st Draw Tab	6,000,000	
LeMond Settlement Payment 2	See Farcheville Sale Tab	13,000,000	9
Income Taxes	See 2nd Draw Tab	3,277,112	
Property Taxes	See 2nd Draw Tab	594,865	CA Properties including PC
M&I Bank / WCP	See 1st Draw Tab	4,500,000	Bellevue Condo for Story Mill
Legal	See 2nd Draw Tab	4,287,976	
Personal	See 2nd Draw Tab	3,340,973	
<b>Total Debt</b>		<b>88,310,047</b>	
<b>Net Worth</b>		<b>1,200,344,925</b>	
<b>Total Liabilities &amp; Net Worth</b>		<b>1,288,654,971</b>	

### Footnote

1 Receivable paid within 90 days due to project refinance based off London Group Appraisal.

- 2 10million total receivable, 2Million has been satisfied remaining 8million paid over 3 years period  
 3 60% Ownership of 5 A Shares tti \$20MM, 1B Share tti \$5MM & 24,509,499 Note Receivable  
 4 \$1.3Billion Appraisal conducted in 2007 less net amount of outstanding balance with CS Loan 300MM and misc lot sales  
 5 160 Total Acres. Plotting for 41 density units over 141 Acres for 56-65MM  
 6 Payment of 4.5MM on Go Build Note will release any security held by WCP/M& I Bank  
 7 Collateral for Purchase of GIV from National City  
 8 Dissolution of Marriage Settlement  
 9 Remaining LT payment to Lemond \$13MM allocated to the proceeds from the sale of the CF

### Liability List - Pre Settlement

#### Liabilities

Lender	Type of Facility	Outstanding Amount
American Bank 294	Bank	2,000,000
American Bank 919	Bank	5,000,000
First Bank	Bank	7,857,120
PDNB	Bank	2,500,000
Stockman's Bank 791	Bank	2,000,000
Stockman's Bank 791	Bank	202,000
Wachovia	Bank	8,000,000
		<u>27,559,120</u>

#### Other Debt

Income Taxes	See 1st Draw Tab	3,277,112
Property Taxes	See 1st Draw Tab	594,865
M&I Bank / WCP	See 2nd Draw Tab	4,500,000
Legal	See 2nd Draw Tab	4,037,976
Personal	See 2nd Draw Tab	3,340,973
<b>Total Other Debt</b>		<u>15,750,927</u>

#### Total Debt

<b>Total Debt</b>	<u><u>43,310,047</u></u>
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FLYNN AFFIDAVIT EXHBIT 4



## Unknown

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**From:** Andrea S. Heller [aheller@linerlaw.com]  
**Sent:** Tuesday, July 22, 2008 10:52 AM  
**To:** Jory Russell  
**Subject:** FW: \$20 mm from PEM tomorrow

Jory,

I'm not following what your question is regarding the e-mail below.

Andrea

---

**From:** Jory Russell [mailto:jrussell@blxware.com]  
**Sent:** Monday, July 21, 2008 10:36 PM  
**To:** Steven B. Yankelevitz; G. Frank Glabach; Bertha C. Willner  
**Cc:** jgoldfarb@broadstreamcapital.com  
**Subject:** FW: \$20 mm from PEM tomorrow

Steve, Frank and Bertha – Can you please confirm whether the wire instructions below are for escrow?

Thanks,

Jory

This message and any attached documents may be confidential, privileged or both. If you are not the intended recipient, you are not authorized to open, read, copy, store, distribute or use this information in any way. Failure to comply with this notice may be a violation of applicable laws concerning the receipt of electronic mail. If you have received this transmission in error, please notify the sender immediately by replying to this e-mail and then delete this message. Thank you.

---

**From:** Jory Russell  
**Sent:** Monday, July 21, 2008 10:18 PM  
**To:** jgoldfarb@broadstreamcapital.com; 'Steven B. Yankelevitz'; 'Joshua Grode'; 'Bertha C. Willner'  
**Cc:** Edra Blixseth (External Email)  
**Subject:** RE: \$20 mm from PEM tomorrow

Jim - Please see below with regards to the wire instructions for Escrow. I will confirm with Steve and Frank tomorrow.

1. Edra shall federal wire transfer Eight Million Five Hundred Thousand Dollars (\$8,500,000) in immediately available funds to the following account:

CITY NATIONAL BANK  
ONE CENTERPOINTE DR., STE 160  
LA PALMA, CA 90623  
Account No.: 013508003  
Routing No.: 122016066

Credit to the Account of:  
Commerce Escrow Company  
Escrow No.: 08-53452-HW

---

**From:** Jim Goldfarb [mailto:jgoldfarb@broadstreamcapital.com]

**Sent:** Mon 7/21/2008 10:14 PM

**To:** 'Mitchell C. Regenstreif'; 'Steven B. Yankelevitz'; 'Joshua Grode'; 'Bertha C. Willner'; 'Robert A. Rabbat'; 'Deborah A. Klar'; Jory Russell

**Cc:** Edra Blixseth (External Email)

**Subject:** RE: \$20 mm from PEM tomorrow

The Family Compound is not part of the Collateral if they only fund \$20 mm. That said, we can't do this without Cross Harbour's approval. We are discussing with them at 9:30 am tomorrow.

Also, I've learned from Bertha that the payoff amount to Tim is not correct. Edra, I will call you to discuss this shortly.

---

**From:** Mitchell C. Regenstreif [mailto:mregenstreif@linerlaw.com]

**Sent:** Monday, July 21, 2008 9:57 PM

**To:** jgoldfarb@broadstreamcapital.com; Steven B. Yankelevitz; Joshua Grode; Bertha C. Willner; Robert A. Rabbat; Deborah A. Klar; jrussell@blxware.com

**Cc:** LearG2@aol.com

**Subject:** Re: \$20 mm from PEM tomorrow

I did not see that the cross harbor subordinated mortgage is required...correct?

Mitchell C. Regenstreif  
Liner Yankelevitz Sunshine & Regenstreif LLP  
1100 Glendon Avenue, Fourteenth Floor  
Los Angeles, California 90024  
phone: (310) 500-3570  
fax: (310) 500-3501  
email: mregenstreif@linerlaw.com

-----Original Message-----

**From:** Jim Goldfarb <jgoldfarb@broadstreamcapital.com>

**To:** Steven B. Yankelevitz; Mitchell C. Regenstreif; Joshua Grode; Bertha C. Willner; Robert A. Rabbat; Deborah A. Klar; 'Jory Russell' <jrussell@blxware.com>

**CC:** LearG2@aol.com <LearG2@aol.com>

**Sent:** Mon Jul 21 21:44:06 2008

**Subject:** \$20 mm from PEM tomorrow

PEM and offered and Edra has accepted to fund \$20 mm tomorrow on the following terms:

- 1) Lien on Porcupine Creek
- 2) Lien on Bellevue Condo
- 3) Personal Guarantee
- 4) 30 day negative pledge to not take on additional debt (so they have time to complete the loan)

Uses would be:

- \$7,051,045.70 mm to Tim (\$8 mm minus interest due to Cross Harbour)
- \$8 mm to LeMond
- \$3 mm to M&I
- \$1 mm to PEM
- \$0.2 to GT Securities
- Balance for Payroll, etc

11/18/2009

The catch is that Cross Harbour has not yet agreed to allow this. We have a call with them at 9:30 am PST to discuss.

Jim Goldfarb  
Broadstream Capital Partners, LLC  
(o) 323 666 9450  
(m) 310 666 9450  
(f) 310 861 8954  
jgoldfarb@broadstreamcapital.com

No virus found in this incoming message.

Checked by AVG - <http://www.avg.com>

Version: 8.0.138 / Virus Database: 270.5.4/1566 - Release Date: 7/22/2008 6:00 AM

FLYNN AFFIDAVIT EXHBIT 5

Edra  
 Blixseth EXHIBIT 3  
 K. Pearson-Bell, CSR 3557  
 For I.D. 4-15-09 Pgs. 12  
 Witness: Edra Blixseth

## MEMORANDUM

**TO:** Samuel T. Byrne  
 Matthew E. Kidd  
 Joe Harris

**CC:** Barry Green  
 Paige Manning  
 Adam Curry

**FROM:** Marc B. Heller

**DATE:** September 5, 2008

**SUBJECT:** Yellowstone Mountain Club Deal Structure between CrossHarbor and Edra Blixseth ("EB") as it relates to that certain \$375,000,000 Senior First Lien Credit Facility pursuant to that certain Credit Agreement dated September 30, 2005 among Yellowstone Mountain Club, LLC, Yellowstone Development, LLC and Big Sky Ridge, LLC, as Borrower, Credit Suisse, as Administrative Agent and Collateral Agent, and the Lenders party thereto (the "Credit Agreement")

**Borrower:** Yellowstone Mountain Club, LLC, Yellowstone Development, LLC and Big Sky Ridge, LLC (collectively)

**Administrative Agent/Collateral Agent:** Credit Suisse

**Lenders:** Various financial institutions

This memorandum addresses certain matters relating to the proposed structure of various transactions relating to the Yellowstone Mountain Club between CrossHarbor and Edra Blixseth, as such structure is or may be impacted by the provisions of the Credit Agreement. It is not intended to be a summary of the Credit Agreement. Capitalized terms used but not defined herein have the meanings assigned in the Credit Agreement. Section and subsection references are to the Credit Agreement unless otherwise indicated.

More specifically, this memorandum is intended to highlight those aspects of the proposed deal structure as provided in that certain Agreement to Form dated as of August 13, 2008 which will or may require consent from the Lenders and/or Administrative Agent under the Credit Agreement. For your reference, attached to this memorandum as Exhibits A-D are various organizational charts. Exhibit A is referred to herein as the Existing Structure; Exhibit B is referred to herein as Scenario 1; Exhibit C is referred to herein as Scenario 2; and Exhibit D is referred to herein as JV 1. In addition, we have noted where the transactions contemplated by JV 2 (the master planning/development JV between Discovery and CrossHarbor) may require consent of the Lenders under the Credit Agreement. As this deal evolves, we will need to reexamine how any changes may be affected by the Credit Agreement and whether additional consents may be required.

000001

We would also expect that all parties would want an estoppel and general waivers of all existing defaults under the Credit Agreement, including any that occurred with respect to the transactions effectuated under the marital settlement agreement.

**SUMMARY OF LENDER CONSENTS LIKELY TO BE REQUIRED:**

This is a summary of Lender consents likely to be required (see below for further discussion on these points):

1. Restrictions on Asset Sales/Transfers (Sections 5.18 and 6.8) under Scenario 2, JV 1 and JV 2. **[Requisite Lender consent required (meaning the holders of more than 50% of the aggregate Loan Exposure of all Lenders)]**
2. Restrictions on Change in Control (Section 5.19) under the Existing Structure, Scenarios 1 & 2, and JV 1 and JV 2. **[Requisite Lender consent required]**
3. Restrictions on Investments (Section 6.3) under Scenario 2, JV 1 and JV 2. **[Requisite Lender consent required]**
4. Restricted Payments (Section 6.5) under Scenarios 1 & 2, JV 1 and possibly JV 2. This consent may or may not be necessary depending on the results of various calculations. See item 4 below for details. **[Requisite Lender consent required]**
5. Restrictions on Fundamental Changes (Section 6.7) under Scenarios 1 & 2, and perhaps under JV 1 and JV 2. **[Requisite Lender consent required]**
6. Restrictions on Transactions with Shareholders and Affiliates (Section 6.9) under Scenarios 1 & 2, JV 1 and JV 2. **[Requisite Lender consent required]**
7. Mandatory Prepayments (Sections 2.5 B (ii) (b) and 9.5 (g)) of 50% of all Equity Proceeds received by Borrower or any of its Subsidiaries under Scenarios 1 and 2 and perhaps under JV 1 and JV 2. **[100% Lender consent required]**
8. Any additional indebtedness (secured or unsecured) (Sections 6.1 and 6.2) subject to certain exceptions not likely to be applicable here. **[Requisite Lender consent required]**
9. Extension of Maturity Date (Section 9.5 (A)(d)). **[100% Lender consent required]**
10. If applicable, recording of JV 2 Option and ROFRs (Section 6.2). **[Requisite Lender consent required]**.

NOTE: Some of the required consents go to the fundamental nature of the proposed transactions (such as, but not limited to, items 1 & 2 above) while others are matters that should be consented to because the transactions may also be covered, perhaps in a more indirect way, by other provisions of the Credit Agreement (such as, but not limited to, items 3 & 6 above) or may flow from the implementation of those transactions (such as item 7 above).

**NOTES REGARDING LENDERS' CONSENT:**

000002

Please note that Section 9.1 provides that "...Borrower may not assign or otherwise transfer any of its rights or obligations [under the Credit Agreement] without the prior written consent of each Lender and the Administrative Agent..." So if, as a result of the negotiations with Credit Suisse, and as part of the documentation thereof, it becomes necessary for Borrower to assign its rights in whole or in part to another party (perhaps to a new borrower such as New YC LLC under Scenario 2), this Section may require that unanimous Lender consent be obtained even if only Requisite Lender consent to the underlying transactions necessary to implement Scenarios 1 or 2, JV 1 or JV 2, is required. It is a technical point that should be kept in mind.

Furthermore, if unanimous Lender consent is required for any modification or waiver, and if the Requisite Lenders have consented to such matter, the Agent has the right to purchase the interest of a Lender (and the Borrower has the right to cause an assignment of a Lender's interest to an Eligible Assignee) if such Lender refuses to consent to such modification or waiver.

#### **BRIEF DISCUSSION REGARDING SUBSIDIARIES.**

To the extent JV 1 is characterized as an Unrestricted Subsidiary, certain of the consents described in this memorandum would not be necessary; however, given the proposed structure and control of CrossHarbor over JV 1 and (with Discovery) JV 2, the benefits of an Unrestricted Subsidiary are not available to us.

#### **FARCHEVILLE, ST. ANDREWS AND OTHER YC PROPERTIES.**

Assuming these assets are held in Unrestricted Subsidiaries, there should not be a problem having the sale proceeds distributed up the chain provided that they come out at a point below the level of Borrower or a Restricted Subsidiary. We have not seen anything which would confirm that these assets are held in an Unrestricted Subsidiary but we have been told that is the case. We also need to see how and at what level EB plans to actually pull the sale proceeds out.

Regarding having the sales proceeds infused to support the Yellowstone Mountain Club, that is permitted under the Credit Agreement so long as it is invested in a manner which is consistent therewith (for example, not in the form of a loan to the Borrower or a Restricted Subsidiary in violation of Sections 6.1 or 6.2, and in a manner which will not trigger a mandatory prepayment of 50% of Equity Proceeds pursuant to Section 2.5 B (ii) (b)).

#### **LENDER CONSENTS LIKELY TO BE REQUIRED (MORE DETAIL)**

##### **REQUISITE LENDER CONSENTS REQUIRED**

#### **1. Restrictions on Asset Sales/Transfers (Sections 5.18 and 6.8):**

The "drop down" structure of Scenario 2, and the contributions of assets under JV 1 (and possibly JV 2), are not permitted under Section 5.18, nor do any such transfers fall within any of the safe harbors of Section 6.8 which covers various scenarios (to wit, arms length sales of plated and subdivided Residential Units to a third party in the ordinary course of business for fair market value; releases in connection with construction financing; up to 9 Residential Units to insiders or for legitimate business reasons; certain transfers to Unrestricted Subsidiaries; and sale of stock).

#### **2. Restrictions on Change in Control (Section 5.19):**

000003



The Permitted Holder (meaning Blixseth Group, Inc. or Timothy L. Blixseth) must at all times directly or indirectly Control the Borrower and own, directly or indirectly, 51% of the beneficial interests in the Borrower; subject only to the death or legal incapacity of the Permitted Holder. Scenarios 1 & 2 would not pass this test under the proposed Executive Committee structure since the Permitted Holder would not have the power to direct or cause the direction of the management or policies of Borrower (which is the definition of "Control"). Note that while the 51% ownership test will be met as to YC and YD, this is not the case now with respect to Big Sky Ridge, LLC.

3. **Restrictions on Investments (Section 6.3):**

The investment by Borrower in the to-be-formed entities under Scenario 2 and JV 1 would be prohibited, unless the investment falls within the safe harbor of clause (ii) of Section 6.3. Section 6.3 provides that Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, make or own any Investments, except (i) the Borrower and its Restricted Subsidiaries may make Investments in Cash Equivalents and (ii) the Borrower may form and invest the remaining portion of the Permitted Investment Amount during the Term of the Loan in Unrestricted Subsidiaries.

4. **Restricted Payments (Section 6.5):**

Once the preferred returns (and other payments) are structured, Required Lender consent will likely be necessary to approve the timing and amounts thereof.

Section 6.5 provides that Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payment. "**Restricted Payment**" means (a) any dividend, loan or other distribution, direct or indirect, on account of any shares of any class of stock (or of any other Capital Stock) of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock (or of any other Capital Stock) of its, the Borrower or any of its Subsidiaries now or hereafter outstanding, and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock (or of any other Capital Stock) of its, the Borrower or any of its Subsidiaries now or hereafter outstanding.

So long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower and its Restricted Subsidiaries may:

- (i) Make Restricted Payments to the holders of the Capital Stock of the Borrower in an aggregate amount not to exceed the Restricted Payment Amount [which means on any date of determination, an amount equal to 50% (cumulative from Fiscal Year to Fiscal Year) of Excess Cash Flow received by the Borrower or its Subsidiaries during the period commencing on the first day after the Effective Date] (less any portion of the Restricted Payment Amount used for Investments permitted under Section 6.3(ii) [i.e. permitted investments in Unrestricted Subsidiaries]); provided, that no Restricted Payment shall be permitted pursuant to this clause (i) unless the First Lien Debt LTV Ratio [which means



the ratio of (a) the principal amount of the Obligations as of the Calculation Date, to (b) the Appraised Value of the then remaining Real Property Collateral as of the Calculation Date] for the most recent Fiscal Quarter prior to the date of such Restricted Payment for which financial statements have been delivered as required by subsection 5.3(ii) and (iii) shall be less than 30%;

- (ii) Make Restricted Payments to the holders of the Capital Stock of the Borrower for the purposes of permitting such holders to pay all federal, state and local income tax obligations with respect to income allocated to them from the Borrower and its Subsidiaries; provided the amount of such Restricted Payments made in any Fiscal Year shall not exceed the combined actual amount of such federal, state and local income tax obligations of such holders resulting from income allocated to them from the Borrower; and
- (iii) Make distributions or loans to the holders of the Capital Stock of the Borrower aggregating no more \$209,000,000 of the aggregate proceeds of the Loans, which amount may be distributed in one or more payments prior to the Maturity Date.

**5. Restrictions on Fundamental Changes (Section 6.7):**

Section 6.7 provides that neither the Borrower nor any of its Restricted Subsidiaries shall, without the prior written consent of the Requisite Lenders in their sole and absolute discretion, directly or indirectly, enter into any merger, consolidation, ~~reorganization or recapitalization~~, liquidate, wind up or dissolve, or cause or consent to either the Borrower or any Restricted Subsidiary to enter into any merger, consolidation, reorganization or recapitalization, liquidate, wind up or dissolve. It is likely that the transactions contemplated by Scenarios 1 & 2, and perhaps JV 1 and JV 2, would be viewed as a reorganization or recapitalization requiring Requisite Lenders consent.

**6. Restrictions on Transactions with Shareholders and Affiliates (Section 6.9):**

Section 6.9 provides that the Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service or the payment of any management fees, consulting fees or the making of other disbursements) with any holder of 5% or more of any class of equity Securities of the Borrower or a Restricted Subsidiary or with any Affiliate of the Borrower or of any such Restricted Subsidiary or holder, on terms that are less favorable to the Borrower or that Restricted Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not such a holder or Affiliate; provided that the foregoing restriction shall not apply to (i) the transactions contemplated by the Credit Agreement, (ii) the amounts expressly contemplated under the Financial Plan to be paid to Affiliates of the Borrower, and (iii) contracts and agreements with Borrower and its Restricted Subsidiaries, owners, manager, or affiliates in force as of the Effective Date. These restrictions potentially affect Scenarios 1 & 2, JV 1 and JV 2

**7. Additional Indebtedness (Sections 6.1 and 6.2)**

Any additional indebtedness (secured or unsecured), subject to certain exceptions not likely to be applicable here, will require Requisite Lender consent.

8. **Options/ROFRs (Section 6.2)**

Any recording of any applicable option with respect to JV 2 and/or the existing ROFRs with respect to the Base Lodge area and the remaining golf course lots will require Requisite Lender consent.

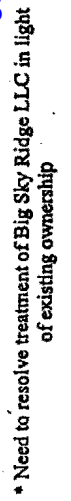
**100% LENDER CONSENT REQUIRED**

A. **Mandatory Prepayments of 50% of all Equity Proceeds received by Borrower or any of its Subsidiaries (Sections 2.5 B (ii) (b) and 9.5 (f) and (g)):**

Section 2.5 B (ii) (b) provides that concurrently with and as a condition to the closing of any transaction pursuant to which the Borrower or any of its Subsidiaries receive any Equity Proceeds (other than Equity Proceeds received by (i) the Borrower from Investments made by the holders of the Capital Stock in the Borrower or (ii) the Borrower's wholly-owned Subsidiaries from Investments made by the Borrower or another of its Subsidiaries in such Subsidiary and permitted under Section 5.11), the Borrower shall prepay the Loan in an aggregate amount equal to 50% of such Equity Proceeds. Scenario 1 would clearly be subject to the provisions of Section 2.5 B (ii) (b). With respect to Scenario 2, some arguments may be available to avoid the mandatory prepayment requirement but such arguments are not likely to be successful. Clauses (f) and (g) of Section 9.5 require that unanimous consent be obtained to any modification or waiver of this requirement. There are, however, some strategies that may be available to avoid or limit the effect of the requirement to pay 50% of Equity Proceeds to the Lenders given the exception in clause (i) above [including investing through an existing interest holder in the Borrower or making the investment over time (whereby only the first investment would arguably be subject to the 50% payment requirement to Lenders)].

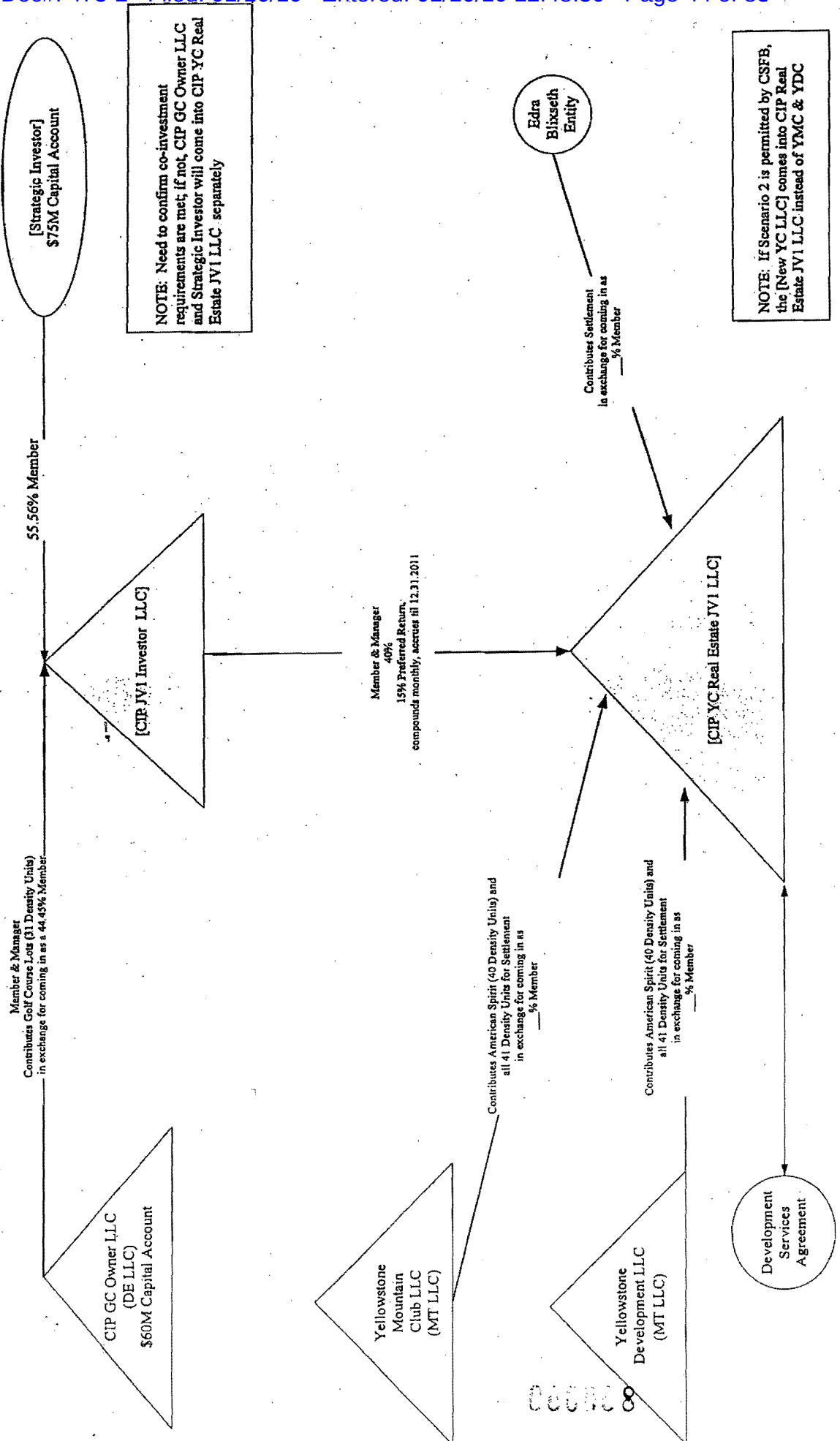
B. **Extension of Maturity Date (Section 9.5 (A)(d))**

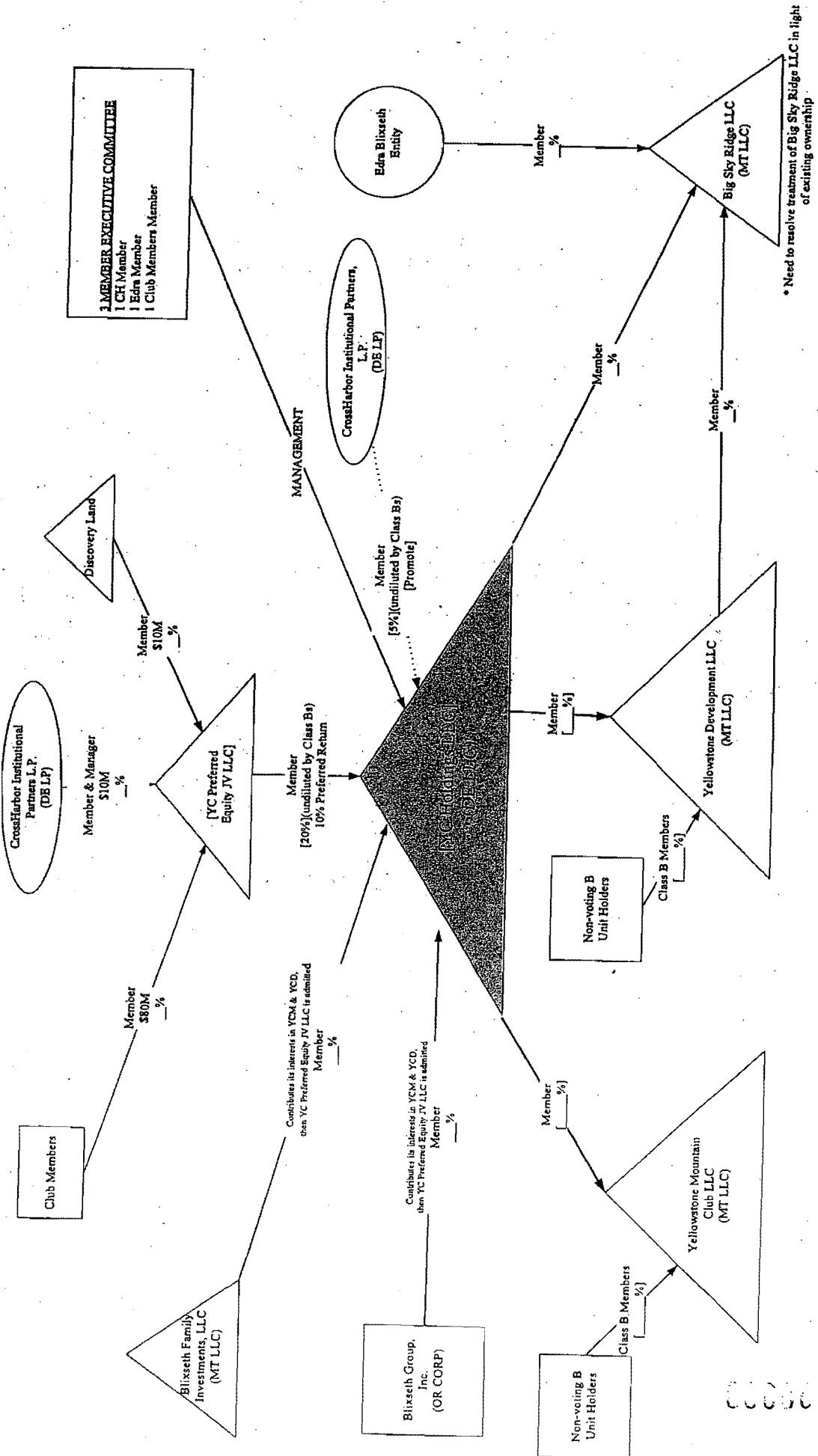
Any extension of the maturity date will require unanimous Lender consent.



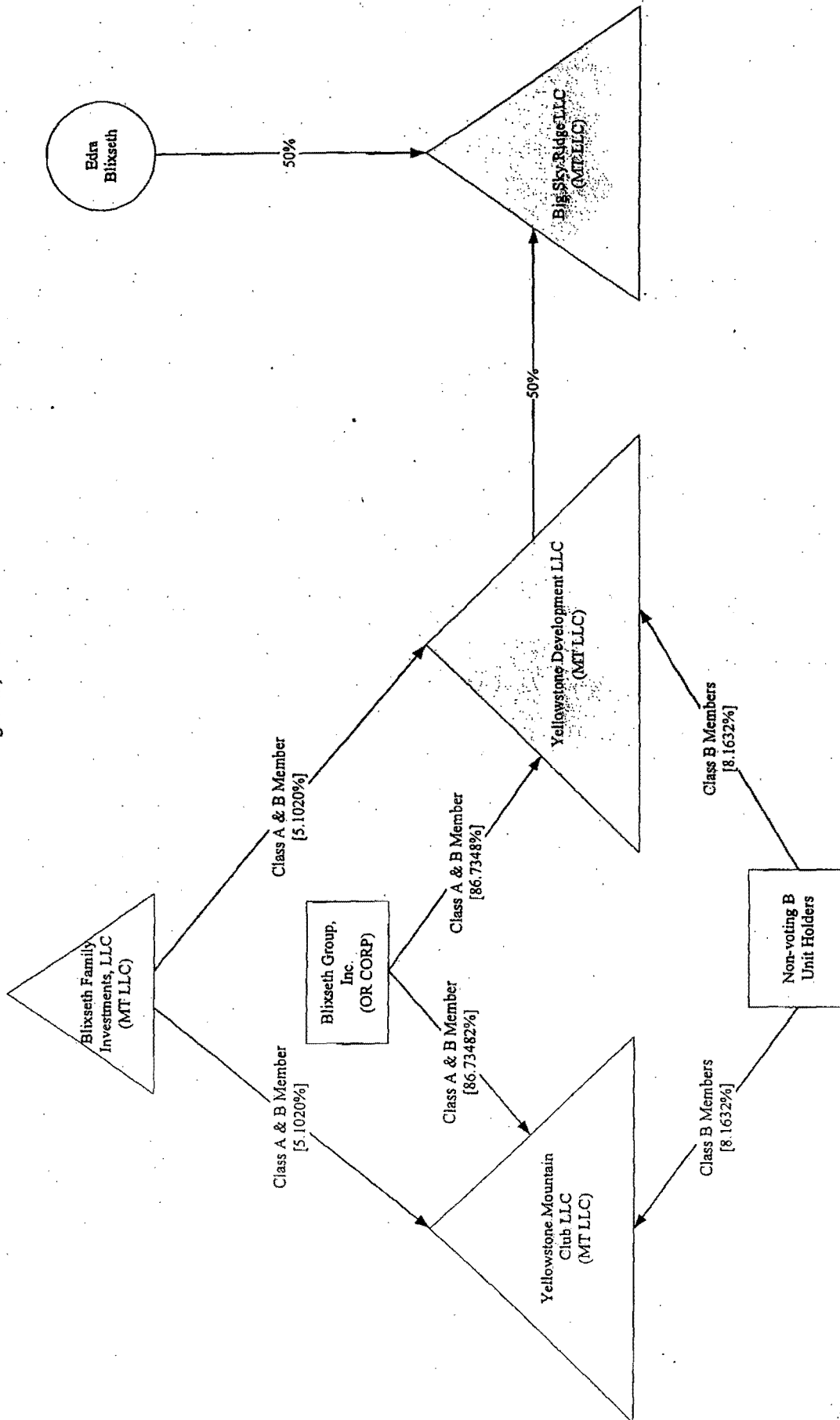
000 107

CrossHarbor Partners LLC  
 Proposed CIP YC Real Estate JV 1 (the Development JV)  
 DRAFT As of September 8, 2008





CrossHarbor Capital Partners LLC  
Existing YC Club Ownership & Control  
As of August 19, 2008



FLYNN AFFIDAVIT EXHBIT 6



## BORROWER(S) FINAL CLOSING STATEMENT

Prepared by  
 STEWART TITLE -NATIONAL TITLE SERVICES  
 1980 Post Oak Blvd, Suite 610  
 Houston, Texas 77056  
 (800)729-1906 Fax (713)552-1703

Borrower(s): Edra Blixseth  
 Lender: CIP Yellowstone Lending LLC  
 Property: Various CA - Montanta  
 Closing Date: 08/13/2008 Proration Date: 08/13/2008  
 Escrow Officer: Patricia Rodricks  
 File Number: 08334078

	DEBIT	CREDIT
<b>NEW LOANS:</b>		
Amount funded by Lender to Escrow		18,000,000.00
Net proceeds of Note A&B (30,951,775.80)		
<b>PAYOFFS:</b>		
Payoff (buyer) -		
CIP YELLOWSTONE LENDING, LLC - 8-12-08		
POCB \$13,094,973.33		
PAYEE: YELLOWSTONE LENDING, LLC		
Payoff (Buyer) - GREG LeMOND ETAL	8,000,000.00	
PAYEE: GREG LeMOND		
Payoff (Buyer) - Tim Blixseth Payment	4,944,396.17	
PAYEE: Tim Blixseth		
Payoff (Buyer) - Internal Revenue Service 8-13-08	2,176,779.22	
PAYEE: Internal Revenue Service		
<b>NEW LOAN CHARGES:</b>		
Lender Closing Costs POCB \$225,000.00		
Archer Financing Fee	200,000.00	
<b>INTEREST CHARGES:</b>		
Interest on New Loan - Pre-Closing Interest		
POCB \$28,000.00		
<b>TITLE CHARGES:</b>		
Owner's Extended Title Policy	200.00	
PAYEE: STEWART TITLE GUARANTY - NTS		
Owner's Extended Title Policy - Montana	40.00	
PAYEE: Security Title		
Endorsements - Lender's Title Policy - Calif. End	23,013.00	
PAYEE: Stewart Title Guaranty Company - NTS		
Endorsements - Owner's Title Policy	7,594.00	
PAYEE: STEWART TITLE GUARANTY - NTS		
Settlement Fee	23,000.00	
PAYEE: STEWART TITLE GUARANTY - NTS		
Security Title	8,424.00	
PAYEE: Security Title Company		
UPDATE/INSPECTION FEE	200.00	
PAYEE: Security Title Company		
\$13,500,000.00 LeMond Loan w/Sec.Title	13,540.00	
PAYEE: Security Title		
OVERNIGHT/WIRE/COPIES FEE	500.00	
PAYEE: STEWART TITLE GUARANTY - NTS		
1st&2nd Loan policies w/end	9,045.80	
PAYEE: Stewart Title of Bozeman		
Montana Inspection Fee	300.00	
PAYEE: Stewart Title of Bozeman		
California Inspection Fees	550.00	
PAYEE: STEWART TITLE OF CALIFORNIA		
Title Prem \$30,200,000.00 & \$800,000.00	34,100.00	
PAYEE: Stewart Title Guaranty Company - NTS		

(Continued on next page)

Page: 1



Borrower Final Closing Statement (continued)  
File Number: 08334078

	DEBIT	CREDIT
RECORDING FEES/TRANSFER CHARGES:		
Recording fees - MONTANA/CALIFORNIA ESTIMATE	2,000.00	
XX amount \$2,000.00		
PAYEE: STEWART TITLE GUARANTY - NTS		
Riverside Transfer Tax	880.00	
PAYEE: Stewart Title of California		
MISCELLANEOUS CHARGES:		
Default No. 684-270-016	21,734.54	
PAYEE: Riverside County Treasurer		
Default No. 684-270-010	189.70	
PAYEE: Riverside County Treasurer		
Default No. 684-470-023	493,113.14	
PAYEE: Riverside County Treasurer		
Default No. 684-460-010	10,109.27	
PAYEE: Riverside County Treasurer		
Default No. 684-470-021	6,385.08	
PAYEE: Riverside County Treasurer		
Default No. 684-470-039	14,486.17	
PAYEE: Riverside County Treasurer		
Default No. 684-270-018	15,828.01	
PAYEE: Riverside County Treasurer		
Default No. 684-470-003	4,206.35	
PAYEE: Riverside County Treasurer		
Default No. 684-470-022	7,772.90	
PAYEE: Riverside County Treasurer		
Default No. 684-470-024	19,085.63	
PAYEE: Riverside County Treasurer		
Default No. 684-470-032	14,707.69	
PAYEE: Riverside County Treasurer		
Default No. 684-470-034	112.32	
PAYEE: Riverside County Treasurer		
Default No. 684-470-036	69.08	
PAYEE: Riverside County Treasurer		
Default No. 684-470-038	69.08	
PAYEE: Riverside County Treasurer		
Default No. 684-460-013	1,963.95	
PAYEE: Riverside County Treasurer		
Default No. 684-130-021	35.01	
PAYEE: Riverside County Treasurer		
Supplemental 2005-06(052-687-872-3)	1,317.22	
PAYEE: Riverside County Treasurer		
Default No. 684-313-010	1,987.15	
PAYEE: Riverside County Treasurer		
Default No. 684-373-007	2,128.04	
PAYEE: Riverside County Treasurer		
County ID 051854863-4, No. 0334311	617.62	
PAYEE: Riverside County Treasurer		
County ID 051854862-3 No. 0334310	605.21	
PAYEE: Riverside County Treasurer		
County ID 051854866-7 No. 0334314	802.18	
PAYEE: Riverside County Treasurer		
County ID 051854864-5 No. 0334312	345.78	
PAYEE: Riverside County Treasurer		
County ID 051854867-8 No. 0334315	428.01	
PAYEE: Riverside County Treasurer		
County ID 051854865-6 No. 0334313	765.24	
PAYEE: Riverside County Treasurer		
Default No. 676-390-049	5,898.63	
PAYEE: Riverside County Treasurer		
Legal Fees - Borrower	500,000.00	
PAYEE: Liner Yankelevitz Sunshine & Regenstr		
Return Funds to Lender	396,197.53	
PAYEE: CIP YELLOWSTONE LENDING LLC		
Commerce Escrow Fee	18,000.00	
PAYEE: Commerce Escrow Company		
SUBTOTALS:	16,983,522.72	18,000,000.00

Borrower Final Closing Statement (continued)  
File Number: 08334078

	DEBIT	CREDIT
BALANCE DUE TO BORROWER:	1,016,477.28	
TOTALS:	18,000,000.00	18,000,000.00

Dated this 13th day of AUGUST, 08.

Edra Blixseth

BY: 

BY: \_\_\_\_\_

STEWART TITLE GUARANTY COMPANY

BY: \_\_\_\_\_

Date: \_\_\_\_\_

FLYNN AFFIDAVIT EXHBIT 7

**From:** LearG2@aol.com [mailto:LearG2@aol.com]

**Sent:** 11 March 2008 15:01

**To:** ceo@1800-investmentgroup.com

**Subject:** Re: Sam Byrne Email Address.

Thanks so much for the follow up. I will wait to hear what you come up with both in regard to your (and group) interest in moving forward on something and/or Cross Harbor/Sam.

The press did not hit today, fyi. Safe travels, Edra

\*\*\*\*\*

**It's Tax Time! Get tips, forms, and advice on AOL Money & Finance.**  
(<http://money.aol.com/tax?NCID=aolprf00030000000001>)

Friday April 10 2009 America Online: TIMBLIXSETH

**From:** LearG2@aol.com [mailto:LearG2@aol.com]  
**Sent:** 25 March 2008 17:16  
**To:** ceo@1800-investmentgroup.com; jim.fultz@terrapinequitypartners.com  
**Subject:** Fwd: (no subject)

From Tim.....there's a lot more, but will tell you later when we can talk. This one is about you guys so thought I should send it. Edra

This message and any attached documents may be confidential, privileged or both. If you are not the intended recipient, you are not authorized to open, read, copy, store, distribute or use this information in any way. Failure to comply with this notice may be a violation of applicable laws concerning the receipt of electronic mail. If you have received this transmission in error, please notify the sender immediately by replying to this e-mail and then delete this message. Thank you.

\*\*\*\*\*

Create a Home Theater Like the Pros. Watch the video on AOL Home.  
(<http://home.aol.com/diy/home-improvement-eric-stromer?video=15?ncid=aolhom00030000000001>)

Return-Path: <TIMBLIXSETH@aol.com>  
From: <TIMBLIXSETH@aol.com>  
To: <LearG2@aol.com>  
Subject: (no subject)  
Date: Tue, 25 Mar 2008 17:36:09 +0200  
Message-ID: <c73.2b7b35e2.351a75e9@aol.com>  
MIME-Version: 1.0  
Content-Type: multipart/alternative;  
boundary="====\_NextPart\_000\_0282\_01C9B9FE.4DC09BF0"  
X-Mailer: 9.0 for Windows sub 5132  
Thread-Index: AciOmWHwl09ts1CjRsG/a5m8enEX8A==

Edra...WELL....Sam called me and we had it out.

He was so self righteous it made me sick. I told him close the deal or NO deal. He made some pretty pointed threats and tried to persuade me to agree to a prepackaged BK. I asked what that would gain. His answer was to force the B holders to the table and it would eliminate all other claims known or unknown. I told him it would kill the brand and I would not do that.

He went on and on about us lying to him about the power and the Pioneer paybacks. I told him he was wrong and the payback to the Pioneers was in the details Bob supplied them a year ago. He scrambled and said they might have missed it but they made their own model and it was not in it. He made threats like "in BK you will never be able to hold on to the trusteeship" due to all the outside interests competing for control.

I asked him if he had met last Friday with a couple guys and he said their names. He said he told them to contact me and told them to contact me. I said they had but did not tell him we were talking.

Friday, April 10, 2009 America Online: TIMBLIXSETH

Opps, call from Tom Kelly and legal team, will resume afterward.

Create a Home Theater Like the Pros. Watch the video on AOL Home.

**From:** Sam Byrne  
**Sent:** Thursday, February 5, 2009 1:21 PM  
**To:** Moore, Paul D. <PDMoore@duanemorris.com>; bgreen@goulstonstorr.com; bhursh@crowleyfleck.com  
**Cc:** Matthew Kidd <MKidd@CrossHarborCapital.com>; Joseph Arenson <jarenson@discoverylandco.com>; Robert Garrow <rgarrow@CrossHarborCapital.com>  
**Subject:** FW: (no subject)

---

My original response to Tim's e-mail.

Samuel T. Byrne  
Managing Partner  
CrossHarbor Capital Partners, LLC  
One Boston Place  
Boston MA 02108  
617 624 8311 direct  
617 624 8340 direct fax  
617 624 8300 main

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---

**From:** Sam Byrne  
**Sent:** Tuesday, March 25, 2008 9:38 AM  
**To:** 'TIMBLXSETH@aol.com'  
**Subject:** RE: (no subject)

No - the idea was to get around the B shareholder vote, extinguish any unknown liabilities and assume the debt. It could be a very clean way to go and give you some leverage with both LeMond and the Bs. The idea was to pay all of the unsecured classes and get in and out very quickly. I believe that it could solve some tax issues with the deposits as well. It would eliminate the need for the \$10 million holdback for the reps and warranties (be it cash or LOC). It would also eliminate any Edra issues and would be completely outside the CA family court.

The issue would be PR, but we could spin that and be in and out inside of 30 days. We could handle this around "there are simply too many people trying to hold up Tim" and this was the cleanest way to go.

If you have some time, I also have another idea that is getting some traction with CSFB, apparently the bond holders are nervous. When can we talk this afternoon>

---

**From:** TIMBLXSETH@aol.com [mailto:TIMBLXSETH@aol.com]  
**Sent:** Tuesday, March 25, 2008 9:27 AM  
**To:** Sam Byrne  
**Subject:** (no subject)

Sam,  
Good morning,

**Subject to Protective Order**  
**CHE07478**

I have a question of you.

When last week you suggested a 2 week "prepackaged bankruptcy," would the idea be to be able to buy the bonds on a deep discount due to the filing? If so how would that effect our price of the deal?

best, tim

---

Create a Home Theater Like the Pros. Watch the video on AOL Home.



From: Joe Harris <joe@gryphonsolo.com>  
Sent: Wednesday, October 15, 2008 4:38 PM  
To: 'Joey Arenson' <jarenson@discoverylandco.com>  
Cc: 'Matthew Kidd' <MKidd@CrossHarborCapital.com>  
Subject: DLC YC Business plan

Edna  
Bisale EXHIBIT 20  
K. Pearson-Bell, CSR 3557  
For I.D. 4-15-09 Pgs 1  
Witness: E.A. Bisale

Hey Joey-  
Could you email Matt and I the current version of DLC's business plan as we get prepared for a pre-pack filing?  
Thanks  
Joe

000039

Subject to Protective Order  
CHE05826

From: Sam Byrne <sbyrne@CrossHarborCapital.com>  
Sent: Monday, October 27, 2008 8:46 PM  
To: joe@gryphonsolo.com; Matthew Kidd <MKidd@CrossHarborCapital.com>  
Subject: Re: The plan

---

It is brilliant

----- Original Message -----

From: joe@gryphonsolo.com <joe@gryphonsolo.com>  
To: Sam Byrne; Matthew Kidd  
Sent: Mon Oct 27 20:33:16 2008  
Subject: Re: The plan

Edra  
Blizeth EXHIBIT 22  
K. Pearson-Bell, CSR 3557  
For I.D. 4-15-09 Pgs 2  
Witness: Edra Blizeth

Sounds dangerous..... And possibly evil..... It could be worth over 1 billion dollars..... I hope it includes a dip and filing by Friday.

----- Original Message -----

From: Samuel T. Byrne  
To: joe@gryphonsolo.com  
To: Matthew Kidd  
Sent: Oct 27, 2008 7:24 PM  
Subject: The plan

I am going to write the "plan" tonight to solve the entire YC debacle. It could be brilliant.

Sent from my Verizon Wireless BlackBerry

bu41

K. Pearson-Bell, CSR 3557

For I.D. 4-15-09 Pgs. 1

Witness: Eara Blissett

From: LearG2@aol.com  
Sent: Tuesday, October 21, 2008 7:43 PM  
To: Chris.Wright@pinntech.com; thomsont.hwc@gmail.com;  
mmeldman@discoverylandco.com  
Cc: Sam Byrne <sbyrne@CrossHarborCapital.com>; jarensen@discoverylandco.com;  
jaska.miettinen@bingham.com; sprince@skybridgecapital.com;  
whitney.peyton@comcast.net  
Subject: Re: Revised Draft Member Communication

---

In a message dated 10/21/08 4:40:06 PM, Chris.Wright@pinntech.com writes:

| But right now we aren't even mentioning bankruptcy or a DIP loan.

that's a good point.....i don't care you all decide the when of this.

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26

FLYNN AFFIDAVIT EXHBIT 8

**From:** Jim Fultz [jamesfultz@comcast.net]  
**To:** CEO@1800-investmentgroup.com  
**Subject:** RE: Fwd: No Subject - See Attachment  
**Date:** 3/28/2008 2:38:23 AM  
**CC:**  
**BCC:**

**Message:**

I am on it... I will be there by noon ...

---

James R. Fultz

339 Beverly Road N.E.  
Atlanta, Georgia 30309

312-402-2575

404-414-8407

---

-----Original Message-----

**From:** J. GARY PETERS [mailto:CEO@1800-Investmentgroup.com]  
**Sent:** Friday, March 28, 2008 5:09 AM  
**To:** James Fultz  
**Subject:** Fw: Fwd: No Subject - See Attachment

Do me a favour....

Calm Edra down and let's not have her write anymore to Tim. We need to see what she has sent to him in the last 48 hours.

Second point is we need to get Greg LeMond on our side...he needs to be aware of what Tim did and what Edra was trying to do.

Third, we need to get in the press that Sam has pulled out of the deal...we need Sam to be removed or at least to go on record as we do not have proof from Tim he ever sent a fax....my guess it was a Trick by Tim if they never gave her a copy.

Fourth, we need to know who the B Shareholders are and tender an offer for them but I need to know the impact and what Tim can counter with...cost is about 5m a share according to Edra.

000061

Fifth, I believe we need also to leak something to the press from an outside source but not through us but you and I to discuss.

Sixth, Edra needs to have her lawyers recant her offer, Tim in most cases will use to show courts she does not need spousal support and what she was prepared to give up when he never gave up anything.

Seventh, I will need to make a statement of account in regards to Sam and Tim but prefer to remain out

Eighth, it had to be Tim's people who called my investors and almost positive it was Andy Hawes who is Tim's western pacific lawyer...I explain when I see you both.

Ninth, we should consider a private investigator to track Tim to east Coast...I think he is going to New York and up to green conn I have feelers out on this but feel I know his plan...

Tenth, ask edra if tim sent her an email about Sam wanting to bankrupt the deal??? Tim hates press so we must hit him quick as he says, he has nothing to loose so we need to take him out where it hurts and that's Ego...maybe time to get burt sugarman on our side as he is a loud mouth with members....ask edra for comments but we really need to hit Tim hard and step up the pressure...my gut feeling was right and when I had the two calls, one from Dubai and the other from my close friend I knew Tim was going to retrade and was why I was in a bad mood...we did not underestimate him, rather Edra tipped her hand to quick which is what he wanted...we need to have her recant all with legal help asap.

See you soon

Gary

J.GARY PETERS  
Managing Partner  
CEO  
32 Georges Mandel  
Paris 75116  
+33 686 359 706

-----Original Message-----

From: LearG2@aol.com

Date: Thu, 27 Mar 2008 22:52:43

To: ceo@1800-investmentgroup.com, jamesfultz@comcast.net

Subject: Fwd: No Subject - See Attachment

This pretty much says it....

000061

**From:** Jim Fultz [jamesfultz@comcast.net]  
**Sent:** Friday, March 28, 2008 2:51 PM  
**To:** LearG2@aol.com  
**Cc:** CEO@1800-investmentgroup.com  
**Subject:** Hitting the ground running  
**Importance:** Low

Edra,

Spoke with Gary before he boarded and I was enroute to the airport in Ft. Lauderdale. I am now in Houston Intercontinental connecting to Palm Springs. I should be at the property by noon I would expect. But, neither Gary or I wanted any grass to grow before we land.. Here are some thoughts and suggestions:

1. We need to get Greg Lamond's team on our side. They need to understand what Tim is really up to. clearly, he reached an agreement with Tim based on the "old" plan worked out with you... that is no longer in effect. Can we reach them today and let's work out a deal that gets them on our side?
2. We need to get into the press that Sam is no longer in the deal, we need Sam removed. We need to confirm that the fax was received, and get a copy. If not, we can attribute a press leak to Tim. But, we should do that today.
3. We need to know who the B Shareholders are and tender an offer for them but we need to know the impact and what Tim can counter with... per your last point on this the cost is about 5m a share correct?
4. Based on your emails to your legal team, they are moving on their work... But, critical that this morning you have your lawyers recant your offer, make sure that Tim can't use your agreement to work together to show you don't need spousal support.. this is critical this morning.
5. Is it possible to get a Private Investigator on Tim this morning. Gary thinks he knows what he is doing in Greenwich Conn. We need to move on this and have a better understanding of what he is doing. Gary has a plan to end run him, particularly after Andy Haas contacted some of Gary's investor's directly. Big mistake, 25 year relationships of Gary's don't go turncote on him.
6. You must shore up your base with your legal team, fire back this morning with letters recanting everything you agreed too, we need to keep punching Tim hard this morning... *no more emails or direct contact from you to Tim*. He needs to just get slammed. Did, you ever get an email from Tim with the email from Sam about bankrupting the YC companies? We may want to leak that to the press of course attributing this to Tim. We need to knock him off his feet today. Perhaps it is time to wrangle in Burt Sugarman, ...loud mouth... but could bring support of some members.

Remember, destabilizing Tim in advance of the offers made on Sunday or Monday by your team to B holders and others is critical. We want ot make sure he can't respond or react.

Sorry for the lengthy email... but we both are up thinking about how to take this guy out once and for all.

I lift from Houston at 7:52am your time. Call me on 404-414-8407 if you are up and want to talk... If not, I hope we can meet at noon at the property.

000063

4/24/2009

**From:** LearG2@aol.com  
**Sent:** Friday, March 28, 2008 3:42 AM  
**To:** Djaffe@jaffeclemens.com; SMendell@jaffeclemens.com; WRyden@jaffeclemens.com; dklar@linerlaw.com; fglabach@linerlaw.com; syankelevitz@linerlaw.com  
**Subject:** new plan of action given Tim's actions

All - I think this goes more in Montana court then family court.

I file (again, but this time in Montana) based on Tim's actions of the last year and of recent, that I take over as Manger of BGI and the YC's. That Tim, based on the e-mail that he sent to Sam and the one to me tonight, was threatening and colluding to put YC in BK. That he had driven the asset down to the point that we were going to get almost nothing out of it. That I came up with what Sam was trying to do and stopped it. That I have the money, through valid investors to come in and take care of paying the LeMonds, the B shares (if they want to), get payables current, have an operator and money to move YC forward.

Explain that Tim is just pulling his same old games. We do this in Montana court and keep the family law things going as they are set. We have only lost one week of depo's which Tim canceled not based on this deal, but that he was ill. We reschedule and get those depo's back on track and keep the April 21 date going. This can be done.

We get the pressure on Tim to get PC and CC in my control.

We fight him on all the things that he is trying to pull about the things we are withdrawing for the support. We hit him from all sides.

AND, in Montana court, I try to get control based on his handling of things this past year, now that Sam's deal is dead.

We have to move fast on this, so I need your thoughts NOW. Edra

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000061

4/24/2009



FLYNN AFFIDAVIT EXHBIT 9

**From:** LearG2@aol.com

**Sent:** Friday, March 28, 2008 3:42 AM

**To:** Djaffe@jaffeclemens.com; SMendell@jaffeclemens.com; WRyden@jaffeclemens.com;  
dklar@linertlaw.com; fglabach@linertlaw.com; syankelevitz@linertlaw.com

**Subject:** new plan of action given Tim's actions

All - I think this goes more in Montana court then family court.

I file (again, but this time in Montana) based on Tim's actions of the last year and of recent, that I take over as Manger of BGI and the YC's. That Tim, based on the e-mail that he sent to Sam and the one to me tonight, was threatening and colluding to put YC in BK. That he had driven the asset down to the point that we were going to get almost nothing out of it. That I came up with what Sam was trying to do and stopped it. That I have the money, through valid investors to come in and take care of paying the LeMonds, the B shares (if they want to), get payables current, have an operator and money to move YC forward.

Explain that Tim is just pulling his same old games. We do this in Montana court and keep the family law things going as they are set. We have only lost one week of depo's which Tim canceled not based on this deal, but that he was ill. We reschedule and get those depo's back on track and keep the April 21 date going. This can be done.

We get the pressure on Tim to get PC and CC in my control.

We fight him on all the things that he is trying to pull about the things we are withdrawing for the support. We hit him from all sides.

AND, in Montana court, I try to get control based on his handling of things this past year, now that Sam's deal is dead.

We have to move fast on this, so I need your thoughts NOW. Edra

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00006

4/24/2009

FLYNN AFFIDAVIT EXHBIT 10

**J Gary Peters**

**From:** LearG2@aol.com  
**Sent:** Wednesday, March 26, 2008 3:41 PM  
**To:** ceo@1800-investmentgroup.com; jamesfultz@comcast.net  
**Subject:** Fwd: (no subject)  
**Attachments:** (no subject) (2.22 KB)

PLEASE never tell that I am sending you all of this. I do it for positive reasons, as I think we are going to have to move fast here. When Sam does not close tonight, we have to be in a good position for this to come off right with members. Let's try to talk on the phone today.

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00037

4/24/2009

FLYNN AFFIDAVIT EXHBIT 11

J Gary Peters

**From:** LearG2@aol.com  
**Sent:** Friday, March 28, 2008 1:35 AM  
**To:** CEO@1800-investmentgroup.com; jamesfultz@comcast.net  
**Subject:** Re: important

In a message dated 3/27/08 5:33:13 PM, CEO@1800-Investmentgroup.com writes:

| Good. See you when I get there. You have not agreed to anything in writing and only the phone call today with  
| B shareholders.

Exactly AND I can easily say to them, that I wrongly trusted Tim again. They would ALL get that. He is such a dumb shit and tries to play these games rather than just do straight business.

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000058

4/24/2009

FLYNN AFFIDAVIT EXHBIT 12

From: Michael Meldman <mmeldman@discoverylandco.com>  
Sent: Wednesday, November 12, 2008 11:01 PM  
To: Sam Byrne <sbyrne@CrossHarborCapital.com>, Joey Arenson  
<jarenson@discoverylandco.com>  
Subject: Re: DLC

---

Perjury

---

From: Sam Byrne  
To: Michael Meldman; Joey Arenson  
Sent: Wed Nov 12 20:37:53 2008  
Subject: DLC

It is clear from all of the written commentary back from the MT courts that both CH and DLC are viewed adversarial by Skadden. Edra also testified that DLC was never part of any CH plan and that she brought them in. Said she studied our business plan (?) and DLC was not part of that equation.

Edra  
Blisseth EXHIBIT 4  
K. Pearson-Bell, CSR 3557  
For I.D. 4-15-09 Pgs 1  
Witness: Edra Blisseth

000013

Subject to Protective Order  
CHE04301



FLYNN AFFIDAVIT EXHBIT 13

J Gary Peters

**From:** LearG2@aol.com  
**Sent:** Thursday, March 20, 2008 11:16 PM  
**To:** syankelevitz@linerlaw.com  
**Subject:** Re: FYI

In a message dated 3/20/08 3:10:54 PM, syankelevitz@linerlaw.com writes:

YC is pocket change to Dubai. It would seem to be worth exploring and if they're interested pay Sam to walk away from the deal.

My guy.....is meeting with Sam in the morning, in Boston at 9:30 and then heading this way. He has a letter with him showing we can close and the money is already in the US.

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4/24/2009

000014

**From:** LearG2@aol.com  
**Sent:** Thursday, March 20, 2008 11:18 PM  
**To:** ceo@1800-investmentgroup.com  
**Subject:** Fwd: FYI  
**Attachments:** FYI (2.78 KB)

Interesting note from my tax lawyer.....you can always have the idea that we talked about that if Sam is burnt out on the deal and just wants to do more of the vertical building.....to help him close and then take him out of part of it. I will leave it to you trusting your gut feelings when you are with him. Can't wait to hear from you.  
Edra

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4/24/2009

000015

**From:** LearG2@aol.com [LearG2@aol.com]  
**To:** ceo@1800-investmentgroup.com  
**Subject:** Fwd: FYI  
**Date:** 3/20/2008 3:18:20 PM  
**CC:**  
**BCC:**

**Message:**

Interesting note from my tax lawyer.....you can always have the idea that we talked about that if Sam is burnt out on the deal and just wants to do more of the vertical building.....to help him close and then take him out of part of it. I will leave it to you trusting your gut feelings when you are with him. Can't wait to hear from you. Edra

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**Attachments:**  
Re FYI.msg

FLYNN AFFIDAVIT EXHBIT 14



U.S. Department of Justice

Criminal Division

Office of the United States Attorney

Washington, D.C. 20530

December 12, 2007

Mr. Timothy Blixseth  
71-534 Sahara Road  
Rancho Mirage, CA 92270

This letter is supplied to a witness scheduled to appear before the federal Grand Jury in order to provide helpful background information about the Grand Jury. The Grand Jury consists of from sixteen to twenty-three persons from the District of Columbia. It is their responsibility to inquire into federal crimes which may have been committed.

As a Grand Jury witness you will be asked to testify and answer questions, and to produce records and documents. Only the members of the Grand Jury, attorneys for the United States and a stenographer are permitted in the Grand Jury room while you testify.

We advise you that the Grand Jury is conducting an investigation of possible violations of federal criminal laws involving, but not necessarily limited to 18 U.S.C. § 1959, § 1344. Bank fraud, § 201 Bribery of public officials and witnesses. You are advised that the destruction or alteration of any document required to be produced before the grand jury constitutes serious violation of federal law, including but not limited to Obstruction of Justice.

You are advised that you are a target of the Grand Jury's investigation. You may refuse to answer any question if a truthful answer to the question would tend to incriminate you. Anything that you do or say may be used against you in a subsequent legal proceeding. If you have retained counsel, who represents you personally, the Grand Jury will permit you a reasonable opportunity to step outside the Grand Jury room and confer with counsel if you desire.

Cordially,

A handwritten signature in dark ink, appearing to read "R Sharpe", is written above the typed name.

Ronald Sharpe  
Assistant United States Attorney

FLYNN AFFIDAVIT EXHBIT 15



U.S. Department Of Justice

Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 8, 2007

Timothy Blixseth  
42765 Dunes View Road  
Rancho Mirage, CA 92270

This office has convened an audit and investigation into numerous land exchanges that you have participated in the past fifteen years. Specifically, the land exchanges known as Gallitan II and in the Payette River Canyon.

Questions have arisen regarding favoritism with regard to political contributions, actual vs reported land valuations, relationships with U.S. Forest Service, Congressmen and Senators, and transactions in Idaho, Montana, Colorado and Washington. There are also allegations of interest hidden from the public, the NEPA, the U.S Forest Service and the U.S. Bureau of Land Management.

Your full cooperation in this matter is requested and expected.

Cordially,

  
Darlene [Redacted]  
Assistant States Attorney







FLYNN AFFIDAVIT EXHBIT 16

In re: Yellowstone Mountain Club, LLC, et al., Debtors  
Videotaped Deposition

Samuel T. Byrne, Vol. I  
April 9, 2009

Page 1

Volume I  
Pages 1 to 185  
Exhibits 1-16

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MONTANA

- - - - -x

	:	Case No.
	:	08-61570-11-RBK
In re:	:	
	:	Jointly
YELLOWSTONE MOUNTAIN CLUB,	:	Administered
LLC, et al.,	:	with 08-61571,
	:	08-61572 and
Debtors.	:	08-61573
	:	Chapter 11
	:	
- - - - -	:	
	:	
OFFICIAL COMMITTEE OF	:	Adv. Pro. No.
UNSECURED CREDITORS,	:	09-014
	:	(Consolidated)
Plaintiff,	:	
	:	
vs.	:	Judge: Ralph B.
	:	Kirscher
CREDIT SUISSE, CAYMAN ISLANDS	:	
BRANCH, and JOHN DOES 1-15,	:	
	:	
Defendants.	:	
	:	
- - - - -x	:	

VIDEOTAPED DEPOSITION OF SAMUEL T. BYRNE, a witness called on behalf of the Defendants, taken pursuant to Rule 45 of the Federal Rules of Civil Procedure, before Anne H. Bohan, Registered Diplomate Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Offices of Skadden, Arps, Slate, Meagher & Flom LLP, One Beacon Street, Boston, Massachusetts, on Thursday, April 9, 2009, commencing at 12:10 p.m.

In re: Yellowstone Mountain Club, LLC, et al., Debtors  
Videotaped Deposition

Samuel T. Byrne, Vol. I  
April 9, 2009

<p style="text-align: right;">Page 94</p> <p>1 people had presented the option at various points in 2 time. From the other side, people in the 3 conversation, lawyers, any number of people. It was 4 not something we were pursuing. 5 Q. But it's something that you did ultimately 6 pursue? 7 A. I didn't pursue it, the debtors pursued it. 8 It's got nothing to do with me. 9 Q. When you loaned the \$35 million to Edra 10 Blixseth, its purpose was to take Tim Blixseth out 11 of his ownership position in the Club; is that 12 correct? 13 MR. MOORE: Object to the form of the 14 question. You can answer it. 15 Q. Do you understand the question, Mr. Byrne? 16 A. I think the purpose of that loan is clear 17 in what the monies were used for, and part of it was 18 for her to complete her marital settlement agreement 19 with Tim. 20 Q. And remove him from an ownership position 21 in the Club? 22 A. That's what her goal was. 23 Q. And you gave her \$35 million to do it? 24 A. I lent her \$35 million against a commitment</p>	<p style="text-align: right;">Page 96</p> <p>1 MR. MOORE: I appreciate your explanation. 2 Thank you. 3 MR. FLYNN: You're welcome. 4 Q. Mr. Byrne -- 5 A. Yes. 6 Q. -- when you loaned Ms. Blixseth the \$35 7 million, between your termination on March 26th of 8 the sale of the Club and the filing of the 9 bankruptcy in November '08, did you know what the 10 money was being used for? 11 A. I'm not sure I understand the question. 12 What's the relevance of the dates? 13 Q. Well, on March 26th your company terminated 14 the deal. We agree on that, do we not? 15 A. We sent a notice of termination. I think 16 we've been over and over many times why we felt the 17 need to do that. 18 Q. In November a bankruptcy plan was filed by 19 Ms. Blixseth. 20 A. That's correct. 21 Q. And we also have in the mix that two weeks 22 before you terminated the deal, you proposed a 23 prepackaged bankruptcy -- 24 A. I didn't propose.</p>
<p style="text-align: right;">Page 95</p> <p>1 to be refinanced within 30 days, to move forward 2 with her transaction. 3 Q. Was there provision in your loan agreement 4 with her whereby -- 5 A. Excuse me. Can we go off the record? I'd 6 like to talk to my attorney for a minute. 7 THE VIDEOGRAPHER: The time is 2:24. We 8 are off the record. 9 (A pause) 10 THE VIDEOGRAPHER: The time is 2:26. We 11 are back on the record. 12 MR. MOORE: I just want to explain the 13 break. The reason for the break is that the witness 14 shares my concern that this deposition seems to be 15 dedicated to matters that are entirely unrelated to 16 this litigation. Again, I would urge you, if you 17 have questions related to the litigation, to ask 18 them. 19 MR. FLYNN: We have different views. 20 They're directly related to the breach of the 21 fiduciary duty claims that have been mounted by the 22 UCC in this case against Mr. Blixseth. 23 BY MR. FLYNN: 24 Q. Mr. Byrne --</p>	<p style="text-align: right;">Page 97</p> <p>1 Q. -- to Mr. Blixseth? 2 A. I didn't propose. 3 MR. MOORE: Object to the form of the 4 question. 5 Q. You didn't propose it? 6 A. I testified to it already. 7 Q. You had a discussion with him about it? 8 A. The e-mail speaks for itself. 9 MR. MOORE: The testimony speaks for itself 10 too. I think we've had about ten questions on this 11 already. 12 MR. FLYNN: I'm not talking about the 13 e-mail; I'm talking about the issue of your 14 discussion. 15 Q. Did you or did you not have a discussion 16 several weeks before the termination letter that you 17 sent relating to a prepackaged bankruptcy? It's a 18 simple question; I'd like a yes-or-no answer. Did 19 you have that discussion? 20 MR. MOORE: You already have answers to 21 that at least three times. 22 MR. FLYNN: I think I now have conflicting 23 answers. 24 A. What are the conflicting answers?</p>

25 (Pages 94 to 97)

In re: Yellowstone Mountain Club, LLC, et al., Debtors  
Videotaped Deposition

Samuel T. Byrne, Vol. I  
April 9, 2009

<p style="text-align: right;">Page 98</p> <p>1 Q. Did you have that discussion?</p> <p>2 MR. MOORE: Object to the form of the</p> <p>3 question. Go ahead.</p> <p>4 A. We had an e-mail discussion. You've seen</p> <p>5 the e-mail. It is what it is.</p> <p>6 Q. Aside from the e-mail did you verbally</p> <p>7 discuss with Mr. Blixseth --</p> <p>8 A. Tim Blixseth called me looking for options</p> <p>9 for how to resolve the case, and I said, "You've got</p> <p>10 real problems here," and he suggested how we would</p> <p>11 deal with it. We talked about bankruptcy. He said</p> <p>12 he was not interested in going down that path, and I</p> <p>13 said, "That's great, let's just move forward and</p> <p>14 close."</p> <p>15 Then he sent me his thoroughly self-serving</p> <p>16 e-mail trying to establish some record, which is par</p> <p>17 for the course in this thing, and I responded</p> <p>18 exactly as I factually did.</p> <p>19 Q. Who first used the term, if you can recall,</p> <p>20 "prepackaged bankruptcy"?</p> <p>21 A. I don't recall. Possibly Credit Suisse,</p> <p>22 but I don't recall.</p> <p>23 Q. Between you and Mr. Blixseth, who first</p> <p>24 used the term?</p>	<p style="text-align: right;">Page 100</p> <p>1 A. I didn't require her to do anything. To</p> <p>2 the extent she needed releases from the LeMonds to</p> <p>3 satisfy Tim's agreement with her, it had nothing to</p> <p>4 do with us.</p> <p>5 Q. Just so we're clear. So none of these</p> <p>6 payouts that she was going to make from the \$35</p> <p>7 million was a requirement in the loan; is that your</p> <p>8 testimony?</p> <p>9 MR. MOORE: Object to the form of the</p> <p>10 question.</p> <p>11 A. I don't know.</p> <p>12 MR. MOORE: What payouts are you talking</p> <p>13 about?</p> <p>14 Q. LeMond, to the Club, and to satisfy the</p> <p>15 marital settlement agreement. I believe that's what</p> <p>16 you testified to.</p> <p>17 MR. MOORE: Didn't he testify there were</p> <p>18 sources and uses in the agreement? Why don't you</p> <p>19 show him that if you want to know what they were.</p> <p>20 MR. FLYNN: Please, Mr. Moore. You're</p> <p>21 interrupting the deposition.</p> <p>22 Q. Mr. Byrne, I'd like a clear-cut answer to</p> <p>23 this, if I could.</p> <p>24 MR. MOORE: We'd like a clear-cut question</p>
<p style="text-align: right;">Page 99</p> <p>1 A. I don't recall.</p> <p>2 MR. MOORE: He's answered that at least</p> <p>3 four times, and he said the same thing four times,</p> <p>4 which I'm proud of him for that, but enough is</p> <p>5 enough.</p> <p>6 Q. Now, let's go back to the \$35 million loan.</p> <p>7 What were the proceeds being used for, to your</p> <p>8 knowledge, when you gave her the money?</p> <p>9 A. I mean, the sources and uses of the loan</p> <p>10 are in the record, so I don't recall off the top of</p> <p>11 my head. But it involved putting some money,</p> <p>12 short-term money into the Club, paying off her</p> <p>13 obligations under the marital settlement agreement,</p> <p>14 and paying off obligations that Tim had had to the</p> <p>15 LeMond Litigants.</p> <p>16 Q. Did you require as a term of the loan, the</p> <p>17 \$35 million loan, that the LeMond Litigants get</p> <p>18 paid?</p> <p>19 A. I didn't require it. She requested the</p> <p>20 loan, as established in the record. I didn't -- she</p> <p>21 requested the loan. What her intentions were with</p> <p>22 it was to resolve these issues, and she used it for</p> <p>23 those purposes.</p> <p>24 Q. So your testimony --</p>	<p style="text-align: right;">Page 101</p> <p>1 too and a question that's relevant to the</p> <p>2 litigation, but I'm not succeeding in that either.</p> <p>3 Q. Did your loan require her to make payments</p> <p>4 to either LeMond, to Tim Blixseth, to resolve the</p> <p>5 marriage, or to the Club for operating capital?</p> <p>6 It's a real simple question. Did your loan require</p> <p>7 it?</p> <p>8 A. The sources and uses are what they are,</p> <p>9 yes. Whatever they are, they are.</p> <p>10 Q. Thank you. It did require it.</p> <p>11 A. No, I didn't say that. She asked for the</p> <p>12 money. You're making up something like we forced it</p> <p>13 upon her. We know exactly where you're going with</p> <p>14 all this.</p> <p>15 Q. You may be a lot wiser than me.</p> <p>16 A. Oh, please.</p> <p>17 Q. I'm trying to get the facts. So we have an</p> <p>18 answer "yes."</p> <p>19 Now, I believe the loan called for</p> <p>20 repayment of the \$35 million in 30 days; is that</p> <p>21 correct?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Did Ms. Blixseth give you financial</p> <p>24 statements to support the loan before you gave her</p>

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In re: Yellowstone Mountain Club, LLC, et al., Debtors  
Videotaped Deposition

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<p style="text-align: right;">Page 102</p> <p>1 the \$35 million to be repaid in 30 days?</p> <p>2 A. She did. And she gave us evidence that she</p> <p>3 had financing commitments from two different sources</p> <p>4 to do so.</p> <p>5 Q. What were those two sources?</p> <p>6 A. One was Archer Capital and the other was --</p> <p>7 I can't remember -- Kennedy Funding. It might have</p> <p>8 been Kennedy Funding at the time. She had two deals</p> <p>9 working that she had put deposits up on already.</p> <p>10 Q. So when you gave her the \$35 million, it</p> <p>11 was your understanding that: A, she would become</p> <p>12 the owner of the Club; is that correct?</p> <p>13 A. Yes.</p> <p>14 Q. B, she would pay LeMond some amount of</p> <p>15 money; is that correct?</p> <p>16 A. Yes. That's what she was using the</p> <p>17 proceeds for.</p> <p>18 Q. C --</p> <p>19 A. Tim's deal with her required her that she</p> <p>20 get LeMond off his back.</p> <p>21 MR. MOORE: Just answer the question.</p> <p>22 Q. C, that Tim Blixseth would be paid some</p> <p>23 amount of money, correct?</p> <p>24 A. That's correct.</p>	<p style="text-align: right;">Page 104</p> <p>1 statements that she presented to us.</p> <p>2 Q. Have you produced those financial</p> <p>3 statements in this litigation?</p> <p>4 A. I don't know.</p> <p>5 Q. As you sit here right now, what banks do</p> <p>6 you know about, do you now know about, that were not</p> <p>7 disclosed in the financial statements?</p> <p>8 A. I don't know. I don't know without the</p> <p>9 information in front of me, I couldn't answer it</p> <p>10 specifically which ones were or weren't, who she</p> <p>11 owed money to, what litigation claims she had agreed</p> <p>12 to settle, I don't know.</p> <p>13 Q. Well, apparently from the Montana</p> <p>14 bankruptcy litigation we know there was a bank</p> <p>15 called First Bank &amp; Trust of Newport Beach that she</p> <p>16 got about \$8 million from in March '08. Is that one</p> <p>17 of the banks you referred to?</p> <p>18 A. I don't know. Like I said, I answered the</p> <p>19 question I don't know.</p> <p>20 Q. Okay.</p> <p>21 A. I'd have to look at the statements, and now</p> <p>22 knowing what we know because of the filings in the</p> <p>23 bankruptcy, we can reconcile them.</p> <p>24 Q. Now, that \$8 million, coincidentally or</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. D, that some amount of money would be put</p> <p>2 into the Club, correct?</p> <p>3 A. Correct.</p> <p>4 Q. How much was going into the Club?</p> <p>5 A. I don't recall but not a lot.</p> <p>6 Q. How much was going to LeMond?</p> <p>7 A. Whatever the numbers are, they are. I</p> <p>8 don't recall off the top of my head. I don't want</p> <p>9 to speak incorrectly.</p> <p>10 Q. How much was going to be regained by her</p> <p>11 personally from the \$35 million after those other</p> <p>12 obligations were met?</p> <p>13 A. There was virtually nothing, from my</p> <p>14 understanding of it.</p> <p>15 Q. Now, at the time did you know that she was</p> <p>16 in financial straits?</p> <p>17 A. I didn't know the extent to which she had</p> <p>18 borrowed money, because it wasn't disclosed to us in</p> <p>19 the financial statements that were provided to us.</p> <p>20 Q. What was not disclosed that you now know</p> <p>21 about?</p> <p>22 A. Just that she had significant personal</p> <p>23 liabilities out there to banks and to individuals</p> <p>24 that were not accurately reflected in her financial</p>	<p style="text-align: right;">Page 105</p> <p>1 not, was received by Ms. Blixseth roughly at the</p> <p>2 same time as you terminated the sales, if you know?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know if there's a correlation of</p> <p>5 those dates?</p> <p>6 A. There is no correlation of those dates. I</p> <p>7 have no idea who she borrowed money from before the</p> <p>8 last five months, six months. I still don't know</p> <p>9 who she borrowed money from.</p> <p>10 Q. Well, you said you did know that some banks</p> <p>11 or lending institutions --</p> <p>12 A. I don't know if she --</p> <p>13 Q. -- were not disclosed?</p> <p>14 A. She may well have disclosed that one, I</p> <p>15 don't know. As I said, I don't know until I see the</p> <p>16 reconciliations.</p> <p>17 Q. Now, Wachovia Bank, I believe they loaned</p> <p>18 her roughly \$8 million at the same time, happened to</p> <p>19 be March '08 when you terminated the sale. Was that</p> <p>20 one of the banks that was disclosed or not</p> <p>21 disclosed, if you know, on the financial statement?</p> <p>22 A. I said I don't know.</p> <p>23 Q. Okay. Now, American Bank sometime between</p> <p>24 March '08 and the time you gave her the \$35 million</p>

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